

UNITED STATES DISTRICT COURT

**ORIGINAL**

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable YVONNE GONZALEZ ROGERS, Judge

IMPINJ, INC.,	)	<b>Jury Trial</b>
	)	
Plaintiff,	)	<b>Volume 1</b>
	)	
vs.	)	NO. C 19-03161 YGR
	)	
NXP USA, INC.,	)	Pages 1 - 193
	)	
Defendant.	)	Oakland, California
_____	)	Wednesday, July 5, 2023

**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

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(Appearances continued next page)

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Proceedings reported by electronic/mechanical stenography;  
transcript produced by computer-aided transcription.

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A P P E A R A N C E S (CONT'D.)

ALSO PRESENT: Chris Diorio, Impinj, Inc.  
Ralf Kodritsch, NXP USA, Inc.  
Steve Paterson, Jury Consultant

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1 Wednesday, July 5, 2023

8:03 a.m.

2 P R O C E E D I N G S

3 --oOo--

4  
5 (The following proceedings were heard out of the presence  
6 of the jury:)

7 **THE CLERK:** Your Honor, calling the matter of  
8 Impinj, Inc. vs. NXP Incorporated, 19-cv-03161-YGR.

9 Parties, please state your appearance for the record.

10 **MR. AL-SALAM:** Ramsey Al-Salam of Perkins Coie for  
11 plaintiff, and I'm accompanied by Kevin Bouilly,  
12 Christy McCullagh, Jessica Delacenserie, Stevan Stark, and  
13 Marvin Craig Tyler.

14 **THE COURT:** Okay. Good morning, everyone. And if  
15 you haven't already, I think -- I think my courtroom deputy's  
16 trying to get all of the names of yours so that I can try to  
17 memorize them. So I'll get the list soon.

18 All right. Good morning, Mr. Hendershot.

19 **MR. HENDERSHOT:** Yes, Your Honor. Good morning.  
20 Mike Hendershot of Jones Day on behalf of NXP with me are  
21 Greg Lanier, Lisa Furby, John Michalik, and Tom Ritchie.

22 **THE COURT:** Okay. Good morning.

23 So I have -- we have a couple of other people on this side  
24 of the bar.

25 **MR. HENDERSHOT:** I'm sorry. Do you want the -- in

1 front of bar or in the gallery?

2 **THE COURT:** In the front of bar.

3 **MR. HENDERSHOT:** Derrick will be working our video.  
4 His last name is escaping me at the moment. I haven't had  
5 enough coffee.

6 **MR. LEWIS:** Lewis.

7 **MR. HENDERSHOT:** Lewis. There you go.

8 And Lori Murray of Jones Day, as well, will be here  
9 supporting us.

10 **THE COURT:** Is lawyer or nonlawyer?

11 **MR. HENDERSHOT:** A paralegal from Jones Day.

12 **THE COURT:** Okay. Everybody's here. So, you know,  
13 you're real people. I like to be able to say good morning to  
14 people.

15 Okay. So let's see what issues, if any, you have. I have  
16 a couple of questions myself. We'll start every morning just  
17 with what I -- just with the list. We have a little bit more  
18 time right now because jurors are getting checked in. So this  
19 morning, we'll have a bit more time. But, in general, we only  
20 have 30 minutes. And I will figure out what's the most  
21 important thing that -- if any, that we need to deal with. So  
22 we'll always start with the plaintiff.

23 Mr. Al-Salam, give me your list.

24 **MR. AL-SALAM:** I don't have anything to raise,  
25 Your Honor.

1           **THE COURT:** Perfect.

2           Mr. Hendershot?

3           **MR. HENDERSHOT:** Two issues, Your Honor. The first,  
4 before the jurors come in, there is one juror, Number 15,  
5 Dan Bass, that we had proposed the parties should stipulate  
6 should be excused for cause. Impinj did not agree. He --  
7 Mr. Bass indicated in his survey questionnaire that he has  
8 adverse feelings towards the law firm Jones Day, representing  
9 NXP. His response is to question 28 said, "In a prior role, I  
10 worked with the legal industry. I found Jones Day to be one  
11 of those companies I didn't like to work with. I found that  
12 they used their size to push people and vendors around."

13           **THE COURT:** Okay. You represent a billion-dollar  
14 company?

15           **MR. HENDERSHOT:** Yes, Your Honor.

16           **THE COURT:** You represent a billion-dollar company?

17           **MR. AL-SALAM:** I don't know if it's a billion, but  
18 it's -- it's a large company. I mean, in terms of --

19           **THE COURT:** Size. Give me size.

20           **MR. AL-SALAM:** In terms of annual revenues, I think  
21 it's 300 million, something like that.

22           **MR. HENDERSHOT:** Their market cap is between 2 and  
23 \$3 billion, Your Honor.

24           **THE COURT:** Okay. Two very large companies. So I  
25 saw the note. I will ask him questions, and we'll go from

1 there. I will not excuse him on the front end. Okay?

2 **MR. HENDERSHOT:** One other issue, Your Honor?

3 **THE COURT:** Yes.

4 **MR. HENDERSHOT:** There are objections that the  
5 parties cannot resolve to some demonstratives that they've  
6 disclosed for use with a witness, Mr. Ron Oliver.

7 **THE COURT:** Okay.

8 **MR. HENDERSHOT:** Mr. Ritchie from our team is  
9 prepared to address those. I believe he's disclosed for  
10 testifying this afternoon.

11 **THE COURT:** We won't -- well, we won't get to him  
12 this afternoon, I don't think.

13 But is he your first witness?

14 **MR. AL-SALAM:** Second witness.

15 **THE COURT:** All right. Tell me who your witnesses --  
16 who your witnesses are.

17 **MR. AL-SALAM:** We have -- Chris Diorio is our first  
18 witness, and we have no -- there's no disputes regarding  
19 exhibits for Mr. Diorio. And then it would be Mr. Oliver.

20 **THE COURT:** Okay. Okay. And you gave me -- so are  
21 you using -- on a separate topic -- and we'll get to the  
22 demonstratives.

23 And that's the only other thing you have?

24 **MR. HENDERSHOT:** Yes, Your Honor.

25 **THE COURT:** Okay. Are you all using witness binders?



1           **MR. AL-SALAM:** Yes.

2           **THE COURT:** So you will have -- I just want to go  
3 through this because you gave me a thumb drive with all of  
4 your exhibits, which is fine. And I see you've got, you know,  
5 two bookshelves full of hard copies. But I'm obviously not  
6 printing hard copies, so I don't have your exhibits other than  
7 in an electronic format.

8           We will need -- so you will have a witness binder, I'm  
9 assuming, for me?

10          **MR. AL-SALAM:** Yes, Your Honor.

11          **MR. HENDERSHOT:** Yes, Your Honor.

12          **THE COURT:** And in terms of the exhibits for  
13 appellate purposes, the official exhibit, you will be giving  
14 those to Mr. Cuenco, right?

15          **MR. AL-SALAM:** Yes, Your Honor.

16          **MR. HENDERSHOT:** Yes, Your Honor.

17          **THE COURT:** Okay, just to make sure.

18           All right. Let's see the demonstratives.

19          **MR. HENDERSHOT:** Your Honor, there will be one other  
20 quick issue that I'll want to raise after this that I've been  
21 told about.

22          **THE COURT:** Give me the list.

23          **MR. HENDERSHOT:** It is a -- we have a pro hac vice  
24 application pending for Tim Hebron. He -- we were planning  
25 for him to maybe be active today, so if we could get that

1 granted, it would be much appreciated, Your Honor.

2 **THE COURT:** Okay. We'll take a quick look.

3 **MR. HENDERSHOT:** Thank you.

4 **MR. RITCHIE:** Good morning, Your Honor,  
5 Thomas Ritchie on behalf of NXP. If I may hand up a copy for  
6 the deputy and a copy for the court.

7 (Off-the-record discussion.)

8 **THE COURT:** And can I have the list of names?

9 **MR. RITCHIE:** I'm handing up copies of demonstratives  
10 and exhibits that were disclosed for.

11 **THE CLERK:** I've not checked everyone yet,  
12 Your Honor.

13 (Off-the-record discussion.)

14 **THE COURT:** Okay. So I have your -- I have your  
15 documents here.

16 So where -- where do you want me to look?

17 **MR. RITCHIE:** So, Your Honor, these -- these  
18 demonstratives were disclosed to us last night. As  
19 Mr. Hendershot said, we met and conferred, could not reach  
20 resolution. We object to the exhibits that we've given you as  
21 well as the testimony that it foreshadows from Mr. Oliver for  
22 two reasons. One, it's expert testimony.

23 **THE COURT:** You deposed him?

24 **MR. RITCHIE:** He was deposed, yes, ma'am.

25 **THE COURT:** Yeah. I saw references to this in your

1 pending motions. The reason that I require -- and it's always  
2 around patent cases. This is why it happens.

3 Internal witnesses, obviously, they are the experts in  
4 what they do, right?

5 **MR. RITCHIE:** Yes, Your Honor.

6 **THE COURT:** I require early disclosures for one  
7 purpose, and that is so that you can depose the person. You  
8 deposed him. You know what he's going to say. You're on  
9 notice.

10 So what's the problem?

11 **MR. RITCHIE:** So, Your Honor, the issue that you're  
12 referring to was related to the damages. These are new issues  
13 that have not been raised before relating to the meaning of  
14 term "charge-accumulating path."

15 Mr. Oliver's testimony and the exhibits relate to how  
16 Impinj's products practice the claims. They compare the  
17 accused products to Impinj's own products. And they relate to  
18 how the term is used or would be used in the prior art.

19 **THE COURT:** How do you know this?

20 **MR. RITCHIE:** So for instance, Your Honor, if you  
21 turn to Slide 18 of the deck.

22 We see the slide, 18, is titled, "Impinj Monza R6  
23 Charge-Accumulating Path." And at the left, there's a --  
24 there's a bubble, and it speaks of charge accumulating path  
25 and synchronous switching transistors on the right. It talks

1 about a bias circuit. And it says, "The bias circuit is not  
2 synchronous and not charge accumulating."

3 Now, as you know, the parties have disputed whether a  
4 leakage path is charge accumulating or not, and the Court has  
5 said that that's an issue of fact for the jury to decide.  
6 This is a new issue now. They're pointing to a bias circuit,  
7 and they're saying a bias circuit is not charge accumulating.

8 On Slide 20, it talks about how the Impinj Monza R6 charge  
9 flows. And on the left, it refers to one path as being  
10 dominant, and on the right, there's a bubble that says, "A  
11 bias circuit has a tiny charge flow."

12 So we're getting into interpreting the meaning and  
13 requirements of a term "charge-accumulating path" through  
14 their products in these particular two slides.

15 The next slide, Slide 21, again does the same thing by  
16 comparing the accused product to the products of the plaintiff  
17 with numbers, metrics, and characterizations of bias circuits  
18 and so on.

19 Your Honor, this is not --

20 **THE COURT:** I hear you. Okay.

21 Where has this been disclosed, this exact testimony?

22 **MR. AL-SALAM:** He was deposed four times. They asked  
23 him all about this invention.

24 **THE COURT:** Okay.

25 **MR. AL-SALAM:** This is describing --

1           **THE COURT:** Stop.

2           **MR. AL-SALAM:** Okay.

3           **THE COURT:** I want to see deposition testimony where  
4 he discloses this particular information, or I want it from an  
5 expert. If you can't find it, then it's not been disclosed,  
6 and it will be excluded.

7           **MR. AL-SALAM:** Can I explain?

8           **THE COURT:** I -- you can explain, but I am telling  
9 you now that if you cannot show me, pretrial, where he has  
10 disclosed this specific issue and where I can either see it in  
11 the form of a report or in deposition testimony, if you can't  
12 show it to me, it can't come in.

13           Trials are not time for surprises. Trials are time for  
14 those 14 -- or those 8 individuals to decide a case that all  
15 of you can't decide. And by the way, who is the -- where --  
16 do we have -- do I have corporate representatives yet, here?

17           **MR. RITCHIE:** Mr. Kodritsch from Austria NXP is here  
18 in the courtroom, Your Honor, as well as other representatives  
19 from -- from the legal team on behalf of NXP.

20           **THE COURT:** How about your client? You said --

21           **MR. RITCHIE:** On behalf of NXP, our client, my  
22 client.

23           **THE COURT:** Okay. And your client?

24           **MR. AL-SALAM:** Mr. Diorio is not here. The general  
25 counsel of Impinj is sitting in the back.

1           **THE COURT:** And -- well, then I'll talk to him when  
2 he gets here. I'll talk to both of you. It is interesting to  
3 me -- it will be interesting to me who -- who you all pick  
4 and -- you know, which jurors you choose to -- to decide this  
5 billion-dollar case. I hope the board knows, of your  
6 companies.

7           Anyway, go ahead and explain, but you're going to have to  
8 provide me with --

9           **MR. AL-SALAM:** I can -- I can look for that, if he  
10 was asked. But to be clear --

11          **THE COURT:** No. No. No. No. Not if he was asked.

12          **MR. AL-SALAM:** Okay.

13          **THE COURT:** Because these are specific opinions. So  
14 whether or not he was asked is irrelevant to me. If you're  
15 using him as a back door for expert testimony, and it looks  
16 like from these charts you are, then they have to be  
17 disclosed. And if they are not disclosed, they do not come  
18 in.

19          Go ahead.

20          **MR. AL-SALAM:** Mr. Oliver is going to testify as to  
21 what he invented and what was created. This is the circuit he  
22 created. He -- well, one of the -- depending on which slide  
23 you're looking at, the circuit he created. He's going to  
24 explain how it practices his invention. So --

25          **THE COURT:** But he is using critical terms that are

1 at issue in this trial, right?

2 **MR. AL-SALAM:** But these are terms that are -- that  
3 was used in the patent, so a charge --

4 **THE COURT:** Okay. So if he has an opinion with  
5 respect to whether or not something is not charge  
6 accumulating, and that is a key issue in the trial, which I  
7 believe it is, then it should have been disclosed as an  
8 opinion that needs to be tried.

9 And if he did not do that, there's a problem.

10 **MR. AL-SALAM:** But can he testify factually about how  
11 his own circuit accumulates charge? And on the last slide,  
12 it's talking about -- it's for copying. He's talking about  
13 the resemblance of the NXP rectifier to what is in our  
14 products.

15 So he is -- to me, it's factual testimony about --

16 **THE COURT:** It doesn't sound like factual testimony.  
17 It sounds to me like a backdoor for expert testimony.

18 **MR. AL-SALAM:** When we explain how he created the  
19 invention, I think he has to use the terms in the patent.  
20 "Synchronous" is a part of the patent, and  
21 "charge-accumulating path" --

22 **THE COURT:** Well, when you talk about if -- maybe so.  
23 We'll see. But if he is then opining as to whether or not  
24 NXP's product does the same thing, that certainly goes beyond  
25 the scope of what he created because he -- because it's a

1 comparison by definition.

2 **MR. AL-SALAM:** It not a comparison to the patent.  
3 It's a comparison to our --

4 **THE COURT:** To someone else's product.

5 **MR. AL-SALAM:** -- rectifier.

6 **THE COURT:** It is a comparison to someone else's  
7 product, so that certainly has nothing to do with what he was  
8 thinking when he invented this.

9 **MR. AL-SALAM:** But may he explain his own circuit and  
10 product?

11 **THE COURT:** I don't know. I don't know. I need to  
12 see what it is he's disclosed.

13 **MR. AL-SALAM:** I mean, I'm sure he was asked about  
14 the invention --

15 **THE COURT:** Well, then, I'm sure you'll find  
16 something for me, right?

17 **MR. AL-SALAM:** I guess. He's been deposed four  
18 times. I will --

19 **THE COURT:** Great. Then you'll have all of this on  
20 your laptops, and you can do searches.

21 **MR. AL-SALAM:** Okay, Your Honor.

22 **THE COURT:** Like I said, this is not -- no surprises.

23 **MR. AL-SALAM:** I don't think any of this is a  
24 surprise.

25 **THE COURT:** Great. Then you'll have information for



1 me.

2 Okay. We'll go look at that pro hac vice application. We  
3 will keep you informed when we hear about the jurors.

4 We'll stand in recess until then.

5 **THE CLERK:** Court is in recess.

6 (Recess taken at 8:19 A.M.; proceedings resumed at  
7 9:06 A.M.)

8 **THE COURT:** Let's go back on the record.

9 I have with me one of the prospective jurors.

10 Sir, if you'll -- sir, if you could come forward, please.

11 (Pause in the proceedings.)

12 **THE COURT:** Just come to the microphone right here.

13 And it's Mr. An, is it?

14 **PROSPECTIVE JUROR:** Yes, that's right.

15 **THE COURT:** Okay. So, Mr. An, tell me what's going  
16 on. We typically don't have people show up with their  
17 children.

18 **PROSPECTIVE JUROR:** Yeah, it was -- I'm sorry about  
19 that. It was really difficult for me to get baby care the day  
20 before the holiday -- for the day after the holiday.

21 **THE COURT:** Okay. And with respect to --

22 **PROSPECTIVE JUROR:** On short notice, yeah.

23 **THE COURT:** So with respect -- like, do you -- do you  
24 have -- if you're seated as a juror in this case, do you --  
25 are they in camp? What is the plan for them?

1           **PROSPECTIVE JUROR:** So school starts -- they're at  
2 home with me right now during the summer.

3           **THE COURT:** Okay. And are you still working for  
4 Wells Fargo?

5           **PROSPECTIVE JUROR:** Yes.

6           **THE COURT:** Okay. And how is it that you work and  
7 still take care of your kids?

8           **PROSPECTIVE JUROR:** Yeah. I'm able to work remotely  
9 from home for like, you know, certain days a week.

10          **THE COURT:** So you don't work full-time, or you do  
11 work full-time?

12          **PROSPECTIVE JUROR:** I do work full-time.

13          **THE COURT:** And all of that's remote for Wells Fargo?

14          **PROSPECTIVE JUROR:** It not all remote. It -- so  
15 to -- they -- they want people in the office three days a  
16 week.

17          **THE COURT:** Okay.

18          **PROSPECTIVE JUROR:** And a day of PTO counts as a day  
19 in the office. And so this summer, I'm taking two and a half  
20 days off each week to check that box. And then my manager has  
21 also allowed me work from home two out of six weeks this  
22 summer.

23          **THE COURT:** Okay. And --

24          **PROSPECTIVE JUROR:** So between all that, I'm able to  
25 satisfy the work from office requirement and be at home with

1 the kids.

2 **THE COURT:** And then what are the kids doing while  
3 you're working?

4 **PROSPECTIVE JUROR:** They play with each other. They  
5 watch TV. They -- you know, do reading, coloring.

6 **THE COURT:** And what is the plan for your kids for  
7 this week and next week?

8 **PROSPECTIVE JUROR:** So we actually fly to Dallas on  
9 July 7th, and then we come back on July -- sorry. We don't  
10 come back. Then we go to Phoenix on July 15th.

11 **THE COURT:** Okay. You didn't mention that in your  
12 questionnaire.

13 **PROSPECTIVE JUROR:** No, I didn't. No.

14 I didn't know what constituted a hardship or not, so -- I  
15 didn't want to make that determination.

16 **THE COURT:** Well, I -- I am not sure that your kids  
17 are going to be able to sit through a patent trial. It's hard  
18 for adults to sit through.

19 (Laughter.)

20 **THE COURT:** Now, with your background, I was actually  
21 kind of hoping you might be chosen as a juror. I mean, you  
22 know, you've got a math background, went to Harvard.  
23 Obviously, must be very smart.

24 **PROSPECTIVE JUROR:** Thank you.

25 **THE COURT:** But I don't know -- I -- yeah, I don't

1 know how this could be managed.

2 **PROSPECTIVE JUROR:** Yeah, it -- it -- I didn't want  
3 to claim a hardship, so that's why I -- you know, I wanted to  
4 present the facts here. I know -- maybe I should have done  
5 that at the form. I apologize, but -- yeah.

6 **THE COURT:** Okay. Well, I appreciate you coming in.  
7 This trial won't be over until next week. So I take it that  
8 you purchased your tickets before?

9 **PROSPECTIVE JUROR:** That's right. Um-hmm.

10 **THE COURT:** So I am going to excuse you on a hardship  
11 basis and hope that you take this opportunity to show your  
12 kids what a courtroom looks like and a courthouse, and they  
13 can learn something about civics.

14 **PROSPECTIVE JUROR:** Yes, thank you, Your Honor.

15 **THE COURT:** All right. You're excused. Thank you.  
16 That's juror number 12, Counsel.

17 **THE COURT:** Okay.

18 Are the -- are the rest of the jurors ready?

19 **THE CLERK:** They're ready, Your Honor.

20 **THE COURT:** All right. Counsel, so what will happen  
21 here is that the balance of jurors will come in. As I  
22 mentioned to you before -- how many pages to the judge's list  
23 did I give you, two or three? Three? Okay.

24 So we'll seat the first 16, which takes us to  
25 Juror Bautista on the third page. They will be re-sorted, as

1 I told you, alphabetically. All right?

2 So I'll come back in once we're all seated, and we'll get  
3 started.

4 (Prospective Juror An left the courtroom.)

5 (Recess taken at 9:12 A.M.; proceedings resumed at  
6 9:30 A.M.)

7 (The following proceedings were heard in the presence of  
8 the jury venire:)

9 (Roll call.)

10  
11 **THE COURT:** You may be seated, so maybe not too  
12 excited, I take it.

13 Well, welcome to the United States District Court for the  
14 Northern District of California. I spent my weekend reading  
15 all of your questionnaires. And so that you know, right, the  
16 federal court, unlike your state courts, in this particular  
17 district extends -- you take the State of California, cut in  
18 it four, our district extends from Monterey, all the way up to  
19 the Oregon border, straight down the middle. On the east is  
20 the Eastern District, and the Northern District is the other  
21 side. So slightly different -- slightly different court  
22 system. But we share lots of principles.

23 In any event, I hope you enjoyed your Fourth of July  
24 weekend. As you were probably, or some of may have been  
25 complaining you had to come to the jury duty, part of you

1 really realized, right, we -- our independence, rah, rah.  
2 We're glad to be Americans. We'll talk a little bit more  
3 about that.

4 But why don't you all -- first, everybody, on the --  
5 stand, and you'll be sworn in. Not the lawyers, just the  
6 jurors, all the jurors. All the jurors back in the back, too,  
7 you need to stand, and you'll be sworn in.

8 **THE CLERK:** Please raise your right hand.

9 (Venire sworn).

10 **THE CLERK:** Thank you. Please be seated.

11 **THE COURT:** Well, you've been called as prospective  
12 jurors in the case of Impinj Inc., vs. NXP U.S.A. Inc. Let me  
13 start, really, just by thanking you. Thanking you for  
14 honoring your citizenship because that is what you've, in  
15 fact, done today. I know that you're not here voluntarily.  
16 And other than my kids, I don't know too many people who would  
17 be excited to be jurors. But they -- they really would be  
18 excited to be a juror. They've never gotten picked.

19 But let me just remind you, right, the right to a trial by  
20 jury in the United States is guaranteed to us by the  
21 Constitution. And that right can't be effectuated in  
22 courtrooms across the United States unless people like you  
23 honor your citizenship and come to the courthouse. So again,  
24 let me thank you.

25 If anyone can't hear me, just let me know. We do have

1 some assistive listening devices, which we can provide you if  
2 you're having any problems.

3 So this is an old copy of the Constitution, and I keep it  
4 up here with me to remind me of that right to a trial by jury.  
5 Every week in courtrooms across the United States, judges and  
6 parties are trying to effectuate the rights that we've held so  
7 dear for hundreds of years.

8 I just got back from a trip in east Asia, and I was, every  
9 day, reminded that this right does not exist in other  
10 countries. The rights that we have in our Constitution are  
11 not guaranteed to people in other parts of the world. But  
12 they are here. And I think sometimes we take that for  
13 granted.

14 We take for granted that democracy is ours, and once in a  
15 while, we get to engage in that democracy. And that is what  
16 you are doing here today. And it's not convenient. It's not.  
17 I understand that.

18 But all of you as citizens enjoy the right to serve. It's  
19 actually something that belongs to you. And no one can take  
20 that away from you. It cannot be denied to you on the basis  
21 of color, race, creed, national origin, sexual orientation, or  
22 economic status. In fact, it wasn't that long ago in our  
23 history that many people in this courtroom did not have the  
24 right to serve, myself included. We didn't have that right.  
25 So thank you.

1 Let me share just a little bit of information about your  
2 jury service and what really it means to be on a -- on a jury,  
3 having read some of your answers to the questions that I asked  
4 in the Survey Monkey questionnaire.

5 It is the duty of the jury to decide what the facts are in  
6 a case. That's really what you're doing. These parties  
7 dispute that certain evidence conclude -- you know, relates to  
8 a particular fact. And in this case, it's a patent case. I'm  
9 actually going to talk to you about it, but whether the  
10 patent's infringed or not. They dispute that. They have  
11 evidence, and one side says they believe the evidence shows  
12 that they didn't infringe. And the other side believes that  
13 they did. Kind of really basic.

14 It's the jury's job to decide the facts.

15 Jurors are what we call the judges of the weight and  
16 effect of all of the evidence that's going to be presented to  
17 you. And there's a limitation on what a jury can do. And  
18 that limitation is what we call the law.

19 Now, it's my job as a judge to explain to you what the law  
20 is so that you can do your job. It is the parties' -- the --  
21 the lawyers' role, separate and distinct, to present the  
22 evidence and to represent their clients.

23 As jurors, you must follow the law. I have to follow the  
24 law, the parties follow the law. We are -- we are not a  
25 democracy based upon what any jurors happen to think on any



1 given day. That's not how it works.

2 We have laws. We elect officials and they -- and laws are  
3 passed. So that's my job. The juror's job is to determine  
4 the facts. And the parties' job is to present the evidence.  
5 And the end result of this is what we call -- we have a  
6 verdict. And the end result of a jury trial where everybody's  
7 doing their job fairly and impartially, that's what we believe  
8 gets us to the right answer. That's how the system works.  
9 It's not perfect, but I do believe it's the best system out  
10 there.

11 It is really important, and vitally important, that a  
12 juror -- that each juror open -- maintain an open mind at all  
13 times and not decide the case until the very end.

14 I've tried a lot of -- I've tried a lot of cases, and I  
15 can tell you sometimes when I'm the trier, when I don't have a  
16 jury and I'm just trying it and I have to decide, you hear one  
17 side and you think, gosh, that sounds pretty good.

18 But then you hear the other side and you think, well,  
19 yeah, that sounds pretty good too. So then you have to  
20 weigh -- you have to weigh the evidence and you have to figure  
21 it out.

22 And what we ask jurors to do is to go back there and to  
23 talk about it -- when it's all said and done, once you have  
24 the arguments and the instructions -- to go back there and to  
25 talk together, to use your collective expertise, your

1 collective wisdom, on whether or not to believe somebody. We  
2 ask you to deliberate in that way to get an answer to our  
3 questions.

4 So what this next process is about, voir dire -- I didn't  
5 see any Texans, but I grew up in Texas. So if you ever move  
6 to Texas, down there they say "voir dire." That's where they  
7 say "voir dire." But that's just the Texas way of saying the  
8 French. Because this is French, old French, and it means to  
9 speak the truth. That's what we're asking you to do.

10 I need to have just some basic questions answered. You've  
11 answered many already. This process is going to go by very  
12 quickly 'cause you've answered so many questions. But we just  
13 need to have -- we want to make sure that all of you are, and  
14 can be, fair and impartial to each side.

15 One of the reasons this will go a little bit faster is  
16 because it's a patent dispute. Like, how -- how can -- you  
17 know, it's not like I have police officers. It's not like  
18 a -- no one has died. It's not like a civil rights. It's not  
19 a criminal defense case where people -- people have strong  
20 opinions.

21 Nobody had very strong opinions about patents, and that's  
22 okay. Most people don't. Most people don't spend their free  
23 time thinking about patents. So I expect that this will go by  
24 pretty quickly and then you can go about your day.

25 But that's what this next part's going to be about. Let

1 me shift some gears and talk a little bit about the case, but,  
2 first, I'm going to let the parties introduce their teams.  
3 We'll start with the plaintiff.

4 Mr. Al-Salam, if you could introduce your team, please.

5 **MR. AL-SALAM:** Thank you, again, for doing your duty.  
6 I echo those comments.

7 My name is Ramsey Al-Salam. I'm accompanied by  
8 Kevin Bouilly, Christina McCullagh, Hunter Blackburn,  
9 Amy Stanton, Rachel Hand is in the first row,  
10 Ruben Tyler Kendrick is right there, Jessica Delacenserie,  
11 Stevan Stark, and Marvin Craig Tyler, who does say "voir  
12 dire."

13 **THE COURT:** Okay. Mr. Hendershot, for the defense,  
14 if you'll come to a mic somewhere, that'd be helpful. Thank  
15 you.

16 **MR. HENDERSHOT:** Sure.

17 I'll also echo what the Court said. I think we do have  
18 the best system, and you guys are a critical part of that with  
19 your service and time and attention, and for that, I thank  
20 you.

21 My name is Mike Hendershot. I'm with the law firm of  
22 Jones Day here in the Bay Area. I'm representing NXP U.S.A.,  
23 the defendant in this matter. With me on the team are  
24 Steven Patterson, John Michalik, Tom Ritchie, Lisa Furby, Greg  
25 Lanier, and some other members in the crowd.

1 And also here is Ralf Kodritsch who's in from NXP who's  
2 the business leader globally for this business you're going to  
3 be hearing about in this case. So, again, thank you for your  
4 time and your service.

5 **THE COURT:** Okay.

6 So what am I looking for? I'm only looking for eight  
7 jurors. This is a -- this is going to be a short trial.  
8 And -- and I really do mean that. If you were selected to  
9 come in a few months, you'd be here potentially for six weeks.  
10 If you were coming in January, I'm looking at a three- to  
11 four-month trial. So as federal trials go, this one's pretty  
12 short. And it's only eight jurors. As you can tell, there  
13 are going to be more lawyers in this room than jurors.

14 So, the timing, I expect this case will conclude by next  
15 Friday. Depends, really, on how long the jury deliberates.  
16 But the jury should have the case by Wednesday/Thursday and  
17 then deliberate Thursday/Friday. If you need more time, that  
18 would be up to the juror -- jury.

19 My trial day. We start promptly at 8:30 in the morning.  
20 I actually start before that with the lawyers, but with the  
21 jury I start at 8:30 and we go straight until 1:40. Two  
22 20-minute breaks. We don't take lunch.

23 Why is that? I have hundreds of cases. And a federal  
24 judge, our cases do not go away when we're in trial. So just  
25 like your lives, you all have jobs. Your lives don't go away

1 either. So when I release you at 1:40 I work with the lawyers  
2 to make sure there are no things that are going to come up the  
3 next trial day, but then I have to go take care of my other  
4 cases. So I work in the evening and late in the afternoon and  
5 on the weekends when I'm in trial, just like jurors have to,  
6 because that's what the job is, that's my duty. So that's the  
7 way my trial day works.

8 Once you start deliberating, you can deliberate all day.  
9 And that's fine, too. That's up to the jury.

10 With respect to hardships, at this point, you know, it's a  
11 pretty short trial. So I can -- I'm happy to talk to you  
12 about any hardships you might have, but I am pretty stringent  
13 on giving hardships and I narrowly grant them. Only -- I can  
14 tell you there was a gentleman here today. He had two  
15 six-year-olds, and there was no daycare for them, and he  
16 worked out of the house, and he took care of his kids. So I  
17 let him -- I excused him.

18 If you're the sole caregiver of an elderly person for whom  
19 you couldn't have -- there's no one else that can take care of  
20 them, that kind of person I would let off for hardship.

21 I will -- you can tell me about any economic hardship, but  
22 that in and of itself is not necessarily a reason to let you  
23 off jury duty. Okay?

24 So just the one thing I want you to do on that regard is  
25 take a look to your left and right. Just right now, look at

1 your neighbor. When you ask me about your hardship, the  
2 question's going to be, right, what makes you so special that  
3 you should get off but your neighbor should not. That will be  
4 the question. Again, I understand it's inconvenient. But  
5 that's where we are.

6 So a little bit about the case. As I mentioned, this is a  
7 lawsuit between Impinj and NXP U.S.A. It's a patent trial.  
8 Impinj alleges that NXP is selling products that infringe on  
9 their patents. NXP disagrees. They say that they don't  
10 infringe and, in fact, the patents aren't valid. And Impinj  
11 obviously disagrees with that. So that's basically the  
12 dispute.

13 The attorneys and parties have been in previously  
14 introduced. You saw all the names of people on the  
15 questionnaire. My courtroom deputy, who you've met,  
16 Edwin Cuenco, he's the person with whom you will have the most  
17 interaction. My courtroom court reporter is Raynee Mercado,  
18 who's been with me many, many years. And I will say this  
19 about court reporters, I have to take a break once in a while  
20 because as long as someone's talking, she's working. And she  
21 needs a break once in a while, so just -- just know that.  
22 Okay?

23 So let's get started.

24 If I -- one other note. If at any time during this  
25 process I ask you for an answer to a question that you feel

1 like it's too personal or -- or maybe is embarrassing, you  
2 don't really want to talk about it in front of people, that's  
3 okay. I understand that. Just let me know. I'll make a  
4 note, and I'll try to give you some privacy so you can answer  
5 the question. But I still need to have the information,  
6 right? So if you need privacy, you just let me know.

7 Okay. Let's go ahead and I'm going to go your  
8 questionnaires.

9 Mr. Cuenco, if you can give them that -- that microphone.

10 Do they have it?

11 Okay. Here we are. Terrific.

12 And it's Sinan --

13 **PROSPECTIVE JUROR:** Sinan Alobaide.

14 **THE COURT:** Tell me again.

15 **PROSPECTIVE JUROR:** It's an Arabic name. You can say  
16 Alobaide.

17 **THE COURT:** Alobaide?

18 **PROSPECTIVE JUROR:** Yeah, that works.

19 **THE COURT:** So with respect to your questionnaire,  
20 you were born in Baghdad, then?

21 **PROSPECTIVE JUROR:** Yes, ma'am.

22 **THE COURT:** And when did you come to the States?

23 **PROSPECTIVE JUROR:** I immigrate from -- I went from  
24 Baghdad to Dubai and then from Dubai to here. I arrived in  
25 2011 with my family.

1           **THE COURT:**   Okay.   In 2011.

2           When did you become a U.S. citizen?

3           **PROSPECTIVE JUROR:**   I believe in -- I believe it was  
4           after five years, so that will be around 2015.

5           **THE COURT:**   Okay.

6           All right.   And then what do you do for Accenture?

7           **PROSPECTIVE JUROR:**   I work as a team lead for a  
8           content moderator team.

9           **THE COURT:**   And in -- content moderation of what kind  
10          of content?

11          **PROSPECTIVE JUROR:**   It's with a big tech company.

12          **THE COURT:**   Which kind of company?

13          **PROSPECTIVE JUROR:**   Meta.

14          **THE COURT:**   Okay.

15          So you're doing content --

16          **PROSPECTIVE JUROR:**   Moderation.

17          **THE COURT:**   -- review of Meta data.

18          **PROSPECTIVE JUROR:**   Yeah.

19          **THE COURT:**   And this is coming out of like  
20          Facebook -- or not Facebook but --

21          **PROSPECTIVE JUROR:**   Basically Accenture is a  
22          consultation company, and we contract with Meta to do this  
23          job.   We have a contract with Meta.

24          **THE COURT:**   And the content that you're reviewing,  
25          though, or that your team is reviewing, is what kind of



1 content?

2 **PROSPECTIVE JUROR:** It's confidential to announce it  
3 in public.

4 **THE COURT:** I've had some cases where people are  
5 being hired to review content to determine whether or not it  
6 should be published or not.

7 Is that the kind of content you're talking about?

8 **PROSPECTIVE JUROR:** Pretty similar to this, yeah.

9 **THE COURT:** Okay.

10 And how many people do you lead?

11 **PROSPECTIVE JUROR:** Around 31.

12 **THE COURT:** Thirty-one?

13 **PROSPECTIVE JUROR:** Yeah.

14 **THE COURT:** Okay.

15 All right. Is there anything you want me -- do you think  
16 that you could serve on this jury?

17 **PROSPECTIVE JUROR:** Yes.

18 **THE COURT:** Okay. Anything I should know?

19 **PROSPECTIVE JUROR:** No.

20 **THE COURT:** Okay.

21 Perfect. Let's go ahead and pass it.

22 And Behnaz Banishahab?

23 **PROSPECTIVE JUROR:** Banishahab.

24 **THE COURT:** Okay. Great. And let me see. All  
25 right.

1 And you were born in Tehran?

2 **PROSPECTIVE JUROR:** Yes.

3 **THE COURT:** Okay. And when did you come to the  
4 States.?

5 **PROSPECTIVE JUROR:** 2011.

6 **THE COURT:** And when did you become a U.S. citizen?

7 **PROSPECTIVE JUROR:** 2018.

8 **THE COURT:** All right.

9 And in terms of being an architect, are you -- are you a  
10 fully licensed architect, or are you still in your courses?

11 **PROSPECTIVE JUROR:** I'm still doing my exams --

12 **THE COURT:** Okay.

13 **PROSPECTIVE JUROR:** -- for licensure.

14 **THE COURT:** And what kind of -- what kind of work do  
15 you do?

16 **PROSPECTIVE JUROR:** Restaurants and residentials.  
17 Little bit of winery.

18 **THE COURT:** Okay. I will tell you, people think the  
19 bar exam is difficult. I think your exams are incredibly  
20 difficult.

21 **PROSPECTIVE JUROR:** It's a very lengthy process.

22 **THE COURT:** Yes, it's a very lengthy process. It's  
23 amazing to me that they get all that great work out of you and  
24 then they say you're not licensed, but -- that's -- that's not  
25 my call.

1 Okay. I didn't have really any other questions for you.

2 Do you think that you could serve on this jury? Any  
3 concerns you might have about serving?

4 **PROSPECTIVE JUROR:** No. I think I can.

5 **THE COURT:** Okay. Terrific. Thank you.

6 **PROSPECTIVE JUROR:** You're welcome.

7 **THE COURT:** Dan Bass?

8 **PROSPECTIVE JUROR:** Yeah.

9 **THE COURT:** Okay.

10 And then what does Deque Systems sell?

11 **PROSPECTIVE JUROR:** Pretty good job on the  
12 pronunciation. Most people go "Deck"? It is "Deque."

13 We work with large corporations to help them make websites  
14 and native applications accessible for people with  
15 disabilities.

16 **THE COURT:** Okay.

17 That has -- that's a really hot area this time, right now,  
18 isn't it?

19 **PROSPECTIVE JUROR:** Yeah, it is.

20 **THE COURT:** I can tell because when I have lots of  
21 lawsuits about it, then I know that it's a hot topic.

22 **PROSPECTIVE JUROR:** Yeah, the lawsuits are driving a  
23 lot of the growth. We're not thrilled that that's what's  
24 driving the awareness, but we are glad for the awareness.

25 **THE COURT:** Okay. And then you say you're doing

1 sales.

2 Can you tell me kind of what that means? Do you work  
3 alone? Do you work with a group?

4 **PROSPECTIVE JUROR:** Primarily I'm self-directed.

5 **THE COURT:** Okay.

6 **PROSPECTIVE JUROR:** But I have teams of people that  
7 support me.

8 **THE COURT:** Okay.

9 **PROSPECTIVE JUROR:** And so I'll call on resources  
10 from the company to work with my prospects and my clients to  
11 help them define what it is they're trying to accomplish and  
12 how best to achieve their goals.

13 **THE COURT:** Okay.

14 With respect to the lawsuit that you were involved in, did  
15 that go to trial or did you settle?

16 **PROSPECTIVE JUROR:** We settled.

17 **THE COURT:** Okay.

18 Now, you're one of the few folks who has some, maybe,  
19 background in patent law. You've got perspectives that you  
20 think they need to be updated, et cetera.

21 Tell me what -- where you said, "Patent laws need to be  
22 updated."

23 **PROSPECTIVE JUROR:** Oh, I know what you're asking  
24 about. It's just in relation to how as a -- as just a normal  
25 citizen, I hear things about how or if patent law applies to

1 so many of the things that are going on in life today.

2 **THE COURT:** Okay.

3 **PROSPECTIVE JUROR:** Sometimes some of the structures  
4 and controls don't --

5 **THE COURT:** Do you have a particular one in mind that  
6 you're thinking about?

7 **PROSPECTIVE JUROR:** Not any -- it -- not a specific  
8 one. It's just more just a general sense that there are  
9 things -- a lot of the laws were written -- and I guess maybe  
10 it's sort of a bleed over from copyright as well in the  
11 digital world, how the laws were written before what we have  
12 today. You know, my daughter's 24, 25 years old, and she  
13 doesn't -- she thinks, well, everybody's had a smart phone  
14 forever. I'm like, yeah, no.

15 **THE COURT:** I did an antitrust trial with iPods  
16 and -- and we had -- we brought the iPods out because no one  
17 remembered what they were like.

18 **PROSPECTIVE JUROR:** Right, you know.

19 **THE COURT:** And, in fact, I had forgotten, and I was  
20 like why isn't there a speaker? And they are like, no, you  
21 need headphones. Oh.

22 **PROSPECTIVE JUROR:** So it's more just a general sense  
23 that they need to update the laws rather than a specific,  
24 like, okay, this -- this patent law is wrong.

25 **THE COURT:** Okay.

1           **PROSPECTIVE JUROR:** More that I think that there are  
2       to many cases where life has changed so fast -- you know,  
3       maybe a good example might be with AI, you know, 'cause that's  
4       starting to come online. We don't know anything about it.

5           **THE COURT:** Okay.

6           **PROSPECTIVE JUROR:** How could the laws know anything  
7       about it.

8           **THE COURT:** So this -- this case involves  
9       semiconductor's chips, kind of a sweet spot for patent law,  
10      and how they're designed and things like that. Ultimately,  
11      though, you know, the Federal Circuit, primarily, and then the  
12      Supreme Court, you know, they make rulings about how we  
13      interpret the statutes that are many times pretty bare bones.  
14      And I will instruct the jury on what the law is with respect  
15      to this particular dispute.

16           Do you have any concerns about following my instructions?

17           **PROSPECTIVE JUROR:** I think I'm pretty good at  
18      parsing, but I -- as my father would tell me, he said, Dan,  
19      when you get a position, you can be a real pain in the --

20           **THE COURT:** Okay. Well, that's fine. I'm sure many  
21      of us probably fit that bill, right? But ultimately -- and,  
22      look, judges are here to answer questions about the law. So  
23      if there's any question, then you can always ask a question.  
24      But ultimately, the jury has to -- the jury has to decide  
25      facts in the context of the way the law is as it sits today.

1 And I will instruct you on what that law is.

2 Can you follow those instructions?

3 **PROSPECTIVE JUROR:** Yeah.

4 **THE COURT:** Okay. The other things is it looks like  
5 may have had kind of some -- you said in a prior role you  
6 worked with the legal industry.

7 Can you tell me what you meant by that?

8 **PROSPECTIVE JUROR:** I was a salesman for a company  
9 that made a red lining tool for the legal industry. And --

10 **THE COURT:** Okay.

11 **PROSPECTIVE JUROR:** -- so I worked with --  
12 extensively and primarily with the legal community.

13 **THE COURT:** Okay.

14 You don't know any of the lawyers on either side, right?

15 **PROSPECTIVE JUROR:** No.

16 **THE COURT:** Okay. But you have had experience with  
17 one of law firms?

18 **PROSPECTIVE JUROR:** Yes.

19 **THE COURT:** Okay. Now, these -- these are both big  
20 law firms, and they are both big companies. And this is a  
21 dispute not between a big company and a little company, it's a  
22 dispute between two big companies.

23 So my question to you is -- 'cause I know your experience  
24 doesn't sound like it was great with respect to one of law  
25 firms. And I'm not mentioning names.

1           **PROSPECTIVE JUROR:** Yeah, yeah, I hear that.

2           **THE COURT:** Okay. Do you think you can put aside  
3 that prior experience and -- and sit in -- in this case,  
4 right, where we don't have a big company, little company, but  
5 it's two big companies, and we don't have a big law firm,  
6 little law firm, it's two big law firms.

7           And you don't know any of these particular lawyers?

8           **PROSPECTIVE JUROR:** Not a one of them.

9           **THE COURT:** Okay. So I -- I need to know because  
10 obviously, you know, one side might be concerned.

11           Can you be fair to both sides or not?

12           **PROSPECTIVE JUROR:** In that video you showed us, talk  
13 about put aside biases, that will be one I have to put aside.

14           **THE COURT:** Correct.

15           And -- and let's talk about biases, right. Because the  
16 video that you all saw, we all have biases. We all have it.  
17 That's how we get through life.

18           The question is you have to -- so no one's saying that  
19 you -- I'm never going to have a jury without any bias.  
20 That's kind of -- that's not how things work. But can you --  
21 part of the putting aside one's bias is, first, to identify  
22 it, and then consciously put it to the side and focus on  
23 what's in front of you.

24           Because this trial is going to be about evidence. And the  
25 lawyers don't testify, right, the lawyers give you nothing in



1 terms of evidence. The evidence comes in the form of  
2 testimony by witnesses who swear an oath and it comes in the  
3 form of, maybe, it's physical things, but in this kind of  
4 case, a lot of documents, and the decision is made based upon  
5 that evidence. The lawyers are there just to ask questions to  
6 get you the evidence, but they themselves have nothing to  
7 offer in terms of actual evidence.

8 So do you want to think about it?

9 It's important. But you sound like a reasonable person.  
10 And so I just need to know whether, understanding that, you  
11 can put it aside and focus just on what's on -- on the  
12 evidence in front of you.

13 **PROSPECTIVE JUROR:** Good news, bad news in my life is  
14 I can be incredibly focused to the point that my daughter can  
15 come up behind me while I'm focused on a topic and stand  
16 behind me waiting for me to know that she is and then she can  
17 scare me.

18 **THE COURT:** And that's the bad news?

19 **PROSPECTIVE JUROR:** Yeah, because I don't see  
20 anything else outside.

21 **THE COURT:** So it sounds like -- well, you tell me.

22 **PROSPECTIVE JUROR:** I can focus.

23 **THE COURT:** Can you?

24 **PROSPECTIVE JUROR:** I think I can focus. It will be  
25 something I have to work through during the trial, but I can

1 focus --

2 THE COURT: Okay.

3 PROSPECTIVE JUROR: -- and I do.

4 THE COURT: All right. Thank you.

5 Okay.

6 Trini Bautista.

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Good morning.

9 PROSPECTIVE JUROR: Good morning.

10 THE COURT: And you were born in the Philippines?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: And when did you come to the States?

13 PROSPECTIVE JUROR: 1972?

14 THE COURT: Nineteen? I didn't hear you.

15 PROSPECTIVE JUROR: 1972.

16 THE COURT: 1972.

17 PROSPECTIVE JUROR: Um-hmm.

18 THE COURT: And when did you become a citizen?

19 PROSPECTIVE JUROR: I was carried over with my  
20 parents when -- I want to say -- hmm --

21 THE COURT: In the '70s or '80s?

22 PROSPECTIVE JUROR: Yes, it's been that long.

23 THE COURT: Okay. Now, you are a buyer for?

24 PROSPECTIVE JUROR: Byer California. It's a women  
25 and children's clothing manufacturer.

1           **THE COURT:** Okay. And what is your role as an  
2 allocator/distributor?

3           **PROSPECTIVE JUROR:** Distribution?

4           **THE COURT:** Um-hmm.

5           **PROSPECTIVE JUROR:** We -- I -- we allocate to the  
6 stores. We have manufacturer like Macy's, J.C. Penney and we  
7 try to ship to our -- goods to those -- to those stores.

8           **THE COURT:** Okay.

9           **PROSPECTIVE JUROR:** And I work with -- you know, we  
10 have a -- our distribution is also out of L.A., so those are  
11 the people that I work with online.

12           **THE COURT:** Okay. And do you think, given what I --  
13 what I've said about our trial day, that you can manage kind  
14 of doing your work when you're not in trial and just for a  
15 week here?

16           **PROSPECTIVE JUROR:** I can try, yes.

17           **THE COURT:** Okay. In terms of the jury that you did  
18 serve on, do you recall -- you said it was a civil jury.

19           So what -- can you just tell me the basics of the trial?

20           **PROSPECTIVE JUROR:** Hmm.

21           **THE COURT:** Do you remember?

22           **PROSPECTIVE JUROR:** You want what -- what was the --

23           **THE COURT:** What kind of case was it?

24           **PROSPECTIVE JUROR:** It was civil. It was regarding  
25 about elderly abuse.

1           **THE COURT:**    Okay.

2           **PROSPECTIVE JUROR:**    Um-hmm.

3           **THE COURT:**    And you said there was a mixed verdict.

4           So did you ultimately -- so you found for the plaintiff on  
5           some claims and for the defense on other claims?

6           **PROSPECTIVE JUROR:**    Yes.

7           **THE COURT:**    And did you award money damages?

8           **PROSPECTIVE JUROR:**    No.

9           **THE COURT:**    Okay.    Okay.

10          Do you have any concerns that I should know about in terms  
11          of serving on the jury?

12          **PROSPECTIVE JUROR:**    No.

13          **THE COURT:**    Okay.

14          All right.    Thank you, Ms. Bautista.

15          James Blum.

16          **PROSPECTIVE JUROR:**    Yes.

17          **THE COURT:**    Good morning.

18          **PROSPECTIVE JUROR:**    Morning.

19          **THE COURT:**    All right.    So what -- what do you do in  
20          terms of information technology, and what kind of company is  
21          Walters & Wolf?

22          **PROSPECTIVE JUROR:**    Walters & Wolf is an engineering  
23          construction company.    I'm the director of IT.

24          **THE COURT:**    Okay.    So you don't have a -- you're not  
25          an engineer by background?

1           **PROSPECTIVE JUROR:** No, I'm not.

2           **THE COURT:** Okay.

3           **PROSPECTIVE JUROR:** And it's like civil engineering.

4           **THE COURT:** Civil engineering.

5           And how big is that group?

6           **PROSPECTIVE JUROR:** The group that works for me is  
7           roughly seven or eight people. There are some interns and  
8           stuff like that on top of that.

9           **THE COURT:** Okay. And you manage all of their  
10          technology systems?

11          **PROSPECTIVE JUROR:** Yes.

12          **THE COURT:** How did you get into that field?

13          **PROSPECTIVE JUROR:** I -- while I was in college, I  
14          worked for like a service bureau that printed out like  
15          technology manuals for -- for technology companies, and one of  
16          the people that I -- was a customer -- was a -- she was a --  
17          like an account manager for PeopleSoft.

18          **THE COURT:** Okay.

19          **PROSPECTIVE JUROR:** And she offered me a job, and  
20          then I went over there and then kind of jumped around from  
21          there.

22          **THE COURT:** Okay. So do you like tech issues?

23          **PROSPECTIVE JUROR:** Yeah.

24          **THE COURT:** So talk to me about your view on patents.

25          **PROSPECTIVE JUROR:** Patents in -- in -- kind of what

1 he -- he mentioned how the speed of technology is changing  
2 quite a bit. And I've just -- and this is -- obviously, this  
3 is anecdotal and through the news, but it seems to me that  
4 companies that will -- will take out patents or -- or own a  
5 piece of IP. And they've got it for 20 years, and nobody else  
6 can really use it or -- or kind of build on it. It's one --  
7 you know, it's kind of stifling the innovation for that  
8 particular -- particular piece of technology.

9 **THE COURT:** Do you think that -- do you have any --  
10 well, let me just -- do you have any concerns about sitting on  
11 this jury, given the kind of issues that I've raised?

12 **PROSPECTIVE JUROR:** No.

13 **THE COURT:** Okay. Any -- any concerns about serving  
14 otherwise just in terms of timing or anything like that?

15 **PROSPECTIVE JUROR:** No.

16 **THE COURT:** All right. Okay. Thank you.

17 Let's go ahead and -- Elizabeth Gonzalez?

18 **PROSPECTIVE JUROR:** Yes.

19 **THE COURT:** And you spell Gonzalez correctly. I  
20 can't tell you how often I get it with the S, but I  
21 understand. I understand. All right. Let's look at yours.  
22 I tell people it's E-Z to remember.

23 **PROSPECTIVE JUROR:** I'll have to remember that.

24 **THE COURT:** Yeah. Yeah. EZ.

25 So you work for FEMA.

1 Can you tell me what you do for FEMA?

2 **PROSPECTIVE JUROR:** Yeah, I'm part of their reservist  
3 program, so I only go out when there's a disaster that's been  
4 declared, and we're needed based on the unit that I work in.  
5 I'm in their individual assistance cadre, so we're there to  
6 help those who have applied for the individuals and households  
7 program, which is pretty much an insurance alternative. So if  
8 they're -- if they have coverage, if they don't have coverage  
9 for their home, flood, homeowners, wind, things like that,  
10 they come to us. We help them with -- through the application  
11 process, if they need to register or what's missing, why  
12 hasn't their case gone through. So we're just -- we're an  
13 in-person presence there --

14 **THE COURT:** Okay.

15 **PROSPECTIVE JUROR:** -- on the ground.

16 **THE COURT:** And you said you're a reservist.

17 So what do you do, if anything, when you're not working  
18 for FEMA?

19 **PROSPECTIVE JUROR:** So I -- for the last couple  
20 years, I've pretty much been out. I've been home for like a  
21 month or so. So I'll catch up on doctor's appointments, visit  
22 friends and family, so I haven't been working when I've been  
23 home. At this point, I've applied for an MBA program, so I'm  
24 waiting to hear from that to -- and then make moves  
25 accordingly depending on what the outcome is there.

1           **THE COURT:** Well, good luck on that. Terrific.

2           **PROSPECTIVE JUROR:** Thank you.

3           **THE COURT:** Do you have any concerns about serving?

4           **PROSPECTIVE JUROR:** No.

5           **THE COURT:** All right. Thank you. Let's go ahead  
6 and pass it.

7           Edgar Hernandez.

8           **PROSPECTIVE JUROR:** Yes.

9           **THE COURT:** Okay. And first of all -- and I know we  
10 get your questionnaire this morning. There was that long list  
11 of people.

12           Did you know anyone on that list?

13           **PROSPECTIVE JUROR:** No.

14           **THE COURT:** Okay. You indicated that you came  
15 from -- you were born in Guatemala, correct?

16           **PROSPECTIVE JUROR:** Yes.

17           **THE COURT:** When did you come to the States?

18           **PROSPECTIVE JUROR:** 1992.

19           **THE COURT:** 1992.

20           And when did you become a citizen?

21           **PROSPECTIVE JUROR:** Nineteen -- 2003.

22           **THE COURT:** Okay. And in terms of your role at  
23 Enterprise, what do you do for them?

24           **PROSPECTIVE JUROR:** Mostly driving.

25           **THE COURT:** And what does that mean? What --



1           **PROSPECTIVE JUROR:** Pick up and drop off people to  
2           their places or home.

3           **THE COURT:** Okay. And it looks like you've been  
4           doing that for quite a while?

5           **PROSPECTIVE JUROR:** Yes, 11 years.

6           **THE COURT:** Now, is -- let's see. You have a bit of  
7           an accent, Mr. Hernandez.

8           Is Spanish your first language, or is --

9           **PROSPECTIVE JUROR:** Actually, it was dialect,  
10          K'iche'.

11          **THE COURT:** Okay.

12          **PROSPECTIVE JUROR:** And then Spanish.

13          **THE COURT:** Okay.

14          **PROSPECTIVE JUROR:** A little bit of English.

15          **THE COURT:** And do you -- I mean, you obviously work  
16          for Enterprise.

17          Do you have any problems understanding English?

18          **PROSPECTIVE JUROR:** Yes. I -- it's -- you know, I  
19          have a basic English, not high level or academic level.

20          **THE COURT:** Okay. Have you been able to understand  
21          everything that I've been talking about?

22          **PROSPECTIVE JUROR:** Some.

23          **THE COURT:** How about -- tell me what percentage do  
24          you understand of what I've said?

25          **PROSPECTIVE JUROR:** About 70 percent.

1           **THE COURT:**   Okay.   All right.

2           Do you have any concerns about serving?

3           **PROSPECTIVE JUROR:**   It just my English.   I think  
4           that's --

5           **THE COURT:**   Okay.   All right.   Thank you,  
6           Mr. Hernandez.

7           **PROSPECTIVE JUROR:**   Thank you.

8           **THE COURT:**   Okay.   Next, I have Andrew Hu; is that  
9           right?

10          **PROSPECTIVE JUROR:**   Yes.

11          **THE COURT:**   All right.   Okay.

12          So you're still at U.C. Santa Cruz; is that right?

13          **PROSPECTIVE JUROR:**   Yes.

14          **THE COURT:**   Okay.   But you're here for the next week;  
15          is that -- as I understand your schedule, correct?

16          **PROSPECTIVE JUROR:**   I'm here until about  
17          mid-September.

18          **THE COURT:**   Okay.   So this is only going to go about  
19          a week.

20          And then you go back to Santa Cruz, correct?

21          **PROSPECTIVE JUROR:**   Yeah.

22          **THE COURT:**   Okay.   And are -- are you, then, living  
23          with your folks at this point?

24          **PROSPECTIVE JUROR:**   Yeah.

25          **THE COURT:**   Okay.   And you're studying computer

1 science?

2 **PROSPECTIVE JUROR:** Yes.

3 **THE COURT:** And what is the -- what is the research  
4 that you're doing with Professor Lintz?

5 **PROSPECTIVE JUROR:** Simulating processors for server  
6 workload.

7 **THE COURT:** Okay. I want to you speak a little bit  
8 louder.

9 You're simulating what?

10 **PROSPECTIVE JUROR:** Simulating, basically, the  
11 processors involved in servers and giving them realistic  
12 workloads.

13 **THE COURT:** Okay. Do you have any concerns about  
14 serving on this jury?

15 **PROSPECTIVE JUROR:** It was just with the timing. But  
16 I think if it wraps up before the -- I have to go back to  
17 Santa Cruz, then no.

18 **THE COURT:** Absolutely going to wrap up. I am not  
19 sitting here for a patent trial for that long. I guarantee  
20 you.

21 The other thing that happens in federal court quite a bit  
22 is that we -- we give lawyers in the civil cases time limits.  
23 So they only have so much time to present their case.

24 Do you know anything about the architecture of  
25 semiconductor chips?

1           **PROSPECTIVE JUROR:** A little bit. It would depend on  
2 what the architecture was.

3           **THE COURT:** Okay. Have you taken some courses that  
4 deal with the design of semiconductor chips?

5           **PROSPECTIVE JUROR:** Yeah, I've taken a computer  
6 architecture.

7           **THE COURT:** Computer architecture.  
8 Anything else that might touch on those issues?

9           **PROSPECTIVE JUROR:** Another course about the physics  
10 fundamentals behind how the components are made.

11           **THE COURT:** Okay. Anything else you can think of?

12           **PROSPECTIVE JUROR:** Nothing else I can think of.

13           **THE COURT:** Okay. Great. Thank you.

14           And we're going to bring it all the way back over here if  
15 we can pass that mic.

16           And it's Tiffany Liu?

17           **PROSPECTIVE JUROR:** Yes.

18           **THE COURT:** Okay. Do you need some more water? Are  
19 you okay? Are you okay?

20           **PROSPECTIVE JUROR:** Yes.

21           **THE COURT:** Okay. All right. So you're a full-time  
22 student down in San Luis Obispo, right?

23           **PROSPECTIVE JUROR:** Yes.

24           **THE COURT:** And how many years there of -- well, how  
25 many years have you done at -- at the university?

1                   **PROSPECTIVE JUROR:** One.

2                   **THE COURT:** One year.

3                   So you're an arising sophomore?

4                   **PROSPECTIVE JUROR:** Yes.

5                   **THE COURT:** And what kind of civil engineering  
6                   courses have you taken?

7                   **PROSPECTIVE JUROR:** I've mainly just taken intro  
8                   courses, just up like an intro course about civil  
9                   engineering --

10                  **THE COURT:** Okay.

11                  **PROSPECTIVE JUROR:** -- in the different disciplines.

12                  **THE COURT:** Okay. Have you taken any -- any courses,  
13                  whether in -- in college or just for fun, that involve  
14                  semiconductor chips or how they're manufactured, anything like  
15                  that?

16                  **PROSPECTIVE JUROR:** No.

17                  **THE COURT:** Have you watched any videos or YouTubes  
18                  about that? Do you do that kind of thing for fun?

19                  **PROSPECTIVE JUROR:** No.

20                  **THE COURT:** And you could. You know, there are some  
21                  people who are like -- who do that kind of thing. Seriously.

22                  My son has this T-shirt, and there's an equation on it.  
23                  And it says, "What? It's not rocket science." And then in  
24                  paren, it says, "Okay. It is." Because that's what he likes  
25                  to do. So, you know, it could be something you enjoy doing.

1 Do you have -- 'cause you're going back to school in -- in  
2 the fall, right?

3 **PROSPECTIVE JUROR:** Yes.

4 **THE COURT:** Okay. Do you have any concerns about  
5 serving on the trial?

6 **PROSPECTIVE JUROR:** I have to travel here, and my  
7 parents have to bring me here every single time because I'm  
8 from San Francisco. So...

9 **THE COURT:** Well, San Francisco's pretty close as it  
10 goes. There are some people who drive over an hour to get  
11 here, as I said.

12 What about BART?

13 **PROSPECTIVE JUROR:** They believe that it's unsafe,  
14 and I also feel unsafe on BART.

15 **THE COURT:** Okay. And what do your parents do?

16 **PROSPECTIVE JUROR:** My dad is construction, and my  
17 mom, I think, she's cleaning.

18 **THE COURT:** Okay. I'll keep that in mind.

19 Let's go ahead -- any -- any other concerns other than  
20 getting here?

21 **PROSPECTIVE JUROR:** I also have a job interview on  
22 Friday.

23 **THE COURT:** On what day?

24 **PROSPECTIVE JUROR:** Friday.

25 **THE COURT:** Okay. What time?

1                   **PROSPECTIVE JUROR:** 3:00.

2                   **THE COURT:** All right. You'll be out if you're -- if  
3 you're seated.

4                   Okay. Any other concerns?

5                   **PROSPECTIVE JUROR:** No.

6                   **THE COURT:** Okay.

7                   All right. Let's pass it, then -- is it Bethany --

8                   **PROSPECTIVE JUROR:** Onywera.

9                   **THE COURT:** Onywera?

10                  **PROSPECTIVE JUROR:** Onywera, yes.

11                  **THE COURT:** So how do you -- so the "Y" is in there.

12                  Ony --

13                  **PROSPECTIVE JUROR:** It is in there, yes. Onywera.

14                  **THE COURT:** Onywera.

15                  **PROSPECTIVE JUROR:** Um-hmm.

16                  **THE COURT:** Okay. Let's see, questions that I had  
17 for you.

18                  Okay. So now, your concerns -- tell me about your  
19 concerns about serving in terms of this one week, if any.

20                  **PROSPECTIVE JUROR:** Yes. I am the sole caretaker of  
21 a 15-month-old who is breastfeeding, and I got lucky in  
22 finding someone to watch him today.

23                  And then I am also in charge of a two-week camp that  
24 actually starts on Monday for a total of 100 kids over the two  
25 weeks. And so starting today -- well, today is one of my prep

1 days that I'm missing to be here. I have prep the rest of  
2 this week, and then I am running that camp.

3 **THE COURT:** Okay. And this is like a Bible camp?

4 **PROSPECTIVE JUROR:** Yes.

5 **THE COURT:** Okay. All right.

6 Any -- any other concerns?

7 **PROSPECTIVE JUROR:** I also did not list that my son  
8 is in a wedding next Friday out of town, so we'll be traveling  
9 next Thursday.

10 **THE COURT:** Your 15-month-old is in a wedding?

11 **PROSPECTIVE JUROR:** He's the ring bearer, yeah.

12 **THE COURT:** They're trusting a ring with a  
13 15-month-old?

14 **PROSPECTIVE JUROR:** It should be interesting. I'm  
15 sorry?

16 **THE COURT:** I said they're trusting a ring with a  
17 15-month-old?

18 **PROSPECTIVE JUROR:** I'm hoping they don't give to it  
19 him. I'm hoping it's fake.

20 **THE COURT:** Okay. All right. Let's go ahead and  
21 pass it.

22 I take it there's nothing else, right?

23 **PROSPECTIVE JUROR:** Not that I can think of.

24 **THE COURT:** Okay.

25 Gina Pelican?



1           **PROSPECTIVE JUROR:** Yes, Judge.

2           **THE COURT:** Okay. And you were born in the  
3           Philippines?

4           **PROSPECTIVE JUROR:** (Nods head.)

5           **THE COURT:** And when did you come to the States?

6           **PROSPECTIVE JUROR:** '91.

7           **THE COURT:** 1991?

8           **PROSPECTIVE JUROR:** Yes, ma'am.

9           **THE COURT:** And when did you become a citizen?

10          **PROSPECTIVE JUROR:** Like, I think 2000.

11          **THE COURT:** Okay. Around 2000?

12          **PROSPECTIVE JUROR:** Yeah.

13          **THE COURT:** What is PF Management?

14          **PROSPECTIVE JUROR:** It's a management for -- we  
15          manage a company.

16          **THE COURT:** What is it that it manages?

17          **PROSPECTIVE JUROR:** Like their -- day-to-day  
18          business. Like, I take care of, like, payroll, payable,  
19          receivable.

20          **THE COURT:** Okay. And as an office manager, how many  
21          people do you manage?

22          **PROSPECTIVE JUROR:** There's, like, less than 15.

23          **THE COURT:** Okay. But in that role, I would take it  
24          that you have to -- you know, you're -- you're constantly  
25          evaluating people who come in front of you, right?

1 That is, you're assessing people's credibility as part of  
2 the -- as part of being a manager?

3 **PROSPECTIVE JUROR:** Well, mostly, my job is like --  
4 like do receivable, payable -- it's a small company -- and  
5 payroll. And I do a little bit of that.

6 **THE COURT:** Okay. I see.

7 You've served on a jury before, right?

8 **PROSPECTIVE JUROR:** Yes, Judge.

9 **THE COURT:** And it was a civil jury, so what was the  
10 case about? Do you remember?

11 **PROSPECTIVE JUROR:** Let's see. It's civil lawsuit,  
12 like someone got hurt on a job.

13 **THE COURT:** Okay. Do you remember whether you ruled  
14 in favor of the plaintiff or defendant?

15 **PROSPECTIVE JUROR:** I believe it's the plaintiff.

16 **THE COURT:** Okay. And did you award money damages?

17 **PROSPECTIVE JUROR:** No.

18 **THE COURT:** Were you the foreperson?

19 **PROSPECTIVE JUROR:** No.

20 **THE COURT:** All right. Do you have any concerns  
21 about serving on the jury?

22 **PROSPECTIVE JUROR:** I'm going to do payroll this  
23 Friday, and my -- my drive is -- I live in Livermore. It's  
24 like so stressful just to get here.

25 **THE COURT:** Okay. Anything else for us to think

1 about?

2 **PROSPECTIVE JUROR:** Just I'll be buried with  
3 paperwork when I get back to work.

4 **THE COURT:** I -- I understand. I understand.  
5 Okay. Anything else? No?

6 **PROSPECTIVE JUROR:** I don't think so.

7 **THE COURT:** Thank you.

8 Rebecca Poon?

9 **PROSPECTIVE JUROR:** Yes.

10 **THE COURT:** Good morning.

11 **PROSPECTIVE JUROR:** Good morning.

12 **THE COURT:** All right. Your -- your significant  
13 other is an attorney at Alston Bird?

14 **PROSPECTIVE JUROR:** Correct.

15 **THE COURT:** And what kind of law? Or -- yeah.

16 **PROSPECTIVE JUROR:** Patent.

17 **THE COURT:** Patent law?

18 **PROSPECTIVE JUROR:** Litigator.

19 **THE COURT:** Okay. So if you are -- if you are chosen  
20 as a juror, you will be instructed that you cannot have any  
21 discussion about any topic, including that this is a patent  
22 case, with anyone including your spouse.

23 Can you follow that instruction?

24 **PROSPECTIVE JUROR:** I can try very hard. But, you  
25 know, he's wondering who's here already.

1           **THE COURT:** Well --

2           **PROSPECTIVE JUROR:** I'm sure.

3           **THE COURT:** Let me be clear.

4           **PROSPECTIVE JUROR:** And he knows the rules, too.

5           **THE COURT:** He knows the rules, one. Second, he  
6 can -- he know -- he actually knows how to check.

7           **PROSPECTIVE JUROR:** He already has, I'm sure.

8           **THE COURT:** I'm sure he already has. Okay.

9           And in any event, if he says anything, you can just look  
10 at him and say, you know the rules. I can't say anything.

11           **PROSPECTIVE JUROR:** We know.

12           **THE COURT:** Okay. All right. In terms of -- in  
13 terms of the knowledge of -- or you highlighted one particular  
14 witness.

15           How did you know that your husband may have worked with  
16 that person?

17           **PROSPECTIVE JUROR:** They were in London together  
18 recently for work.

19           **THE COURT:** Okay. So you knew that?

20           **PROSPECTIVE JUROR:** I just -- and the name was  
21 very -- like, there's -- it stood out to me.

22           **THE COURT:** Okay. Now, again, these are two big  
23 companies suing each other over a patent. And there are going  
24 to be experts on both sides.

25           Can you, with the other jurors, you know, evaluate the

1 testimony of this particular person and decide whether you  
2 agree with that person or not and not be influenced by the  
3 fact that your husband might have been in London with that  
4 person?

5 **PROSPECTIVE JUROR:** Like others have said, it would  
6 be difficult, but I can try my best.

7 **THE COURT:** Okay. Do you believe in patent laws?

8 **PROSPECTIVE JUROR:** Yes.

9 **THE COURT:** Do you have -- do you have lots -- do you  
10 have many conversations with your spouse over kind of the pros  
11 and cons of patent law?

12 **PROSPECTIVE JUROR:** Yes, because it gives him work,  
13 and it helps our family.

14 **THE COURT:** Do you -- do you have conversations  
15 with -- with him about kind of, you know, the specific  
16 interpretation of particular patent laws? I mean, do you feel  
17 like you're versed in patent law?

18 **PROSPECTIVE JUROR:** Oh, no.

19 **THE COURT:** Okay. So do you have -- if you were  
20 chosen, do you ever any concerns that -- well, are you -- you  
21 will be instructed to follow the law as I give it to you.

22 Can you do that?

23 **PROSPECTIVE JUROR:** Yes.

24 **THE COURT:** Okay. Anything else you'd like me to  
25 think about in terms of you serving?

1           **PROSPECTIVE JUROR:** Yes. I'm the primary caregiver  
2 to my five-year-old child. Luckily, like somebody else, I  
3 found somebody to watch him today; however, I don't have  
4 that --

5           **THE COURT:** But how about your spouse?

6           **PROSPECTIVE JUROR:** He is working.

7           **THE COURT:** Yeah. So I have to tell you I don't have  
8 a lot of sympathy because if he has to sit at home and take  
9 care of the child for a week while you're in a patent trial,  
10 so be it. Because one day, he might be in a courtroom and  
11 asking other individuals to sit on his patent trial.

12           **PROSPECTIVE JUROR:** So we have camps lined up and  
13 activities lined up for him.

14           **THE COURT:** Yeah.

15           **PROSPECTIVE JUROR:** So he wouldn't just be sitting at  
16 home with the child. The child has to be taken.

17           **THE COURT:** Right. But he could take them. I mean,  
18 he is a parent. I just -- just so that you know, if you're  
19 seated, you can just tell him the judge didn't have a lot of  
20 sympathy for him because he could have been one of these  
21 lawyers asking other citizens to serve in juries for his own  
22 case.

23           **PROSPECTIVE JUROR:** Okay.

24           **THE COURT:** So -- just to be honest.

25           **PROSPECTIVE JUROR:** Okay.

1           **THE COURT:** All right. But I don't know that you'll  
2 get picked, but that's -- at least that's what I'm thinking.

3           Any other concerns?

4           **PROSPECTIVE JUROR:** Yes. When will there be a  
5 recess? I kind of need to use the restroom very soon.

6           **THE COURT:** Okay. You're going to pass the mic and  
7 go through that door, and there's a bathroom right there.

8           **PROSPECTIVE JUROR:** Thank you.

9           **THE COURT:** You're welcome.

10          Okay. Next, I have Bernadette Richard? No.

11          **PROSPECTIVE JUROR:** I think we're in the wrong seats,  
12 then.

13          **THE COURT:** So what's your name?

14          **PROSPECTIVE JUROR:** I'm Susan Preston.

15          **THE COURT:** My mistake. I jumped forward. So yes,  
16 Susan Preston.

17          You're both teachers. No. No. No. You and Ms. Poon are  
18 both teachers.

19          All right. So let me get yours.

20          Okay. I've said a lot about the nature of the case and  
21 the trial.

22          Do you have any concerns about serving?

23          **PROSPECTIVE JUROR:** The only concern I have is I was  
24 in a skiing accident, and I'm in severe pain. I have ice on  
25 my shoulder, and I've been taking painkillers. So I'm really

1 drowsy. My husband's driving me to court.

2 **THE COURT:** Okay.

3 **PROSPECTIVE JUROR:** So I do have to keep ice on my  
4 arm like every hour.

5 **THE COURT:** Okay. Well, I can help with that.

6 Any other concerns?

7 **PROSPECTIVE JUROR:** I'm supposed to be starting  
8 summer school next week, and it's not a contract. It's a day  
9 rate. And if you don't show up, there's no subs. Thus, I  
10 have a bunch of third graders who are fragile and at risk who  
11 will have no teacher for four weeks.

12 **THE COURT:** Well, it's not -- it's just one week.

13 **PROSPECTIVE JUROR:** I know. But if I don't show up  
14 next Monday, there's no teacher. Thus, they'll cancel their  
15 four weeks.

16 **THE COURT:** I see.

17 **PROSPECTIVE JUROR:** These are our kids who are at  
18 risk, who are below grade level, like, first grade, going into  
19 third grade.

20 **THE COURT:** Okay.

21 (Off-the-record discussion.)

22 **THE COURT:** All right. Any other issues you'd like  
23 me to think about?

24 **PROSPECTIVE JUROR:** No, just that I am on painkillers  
25 and sleepy.



1           **THE COURT:**   Okay.   All right.

2           Now, let's go to Ms. Richards.

3           All right.   Can you tell us what you do in terms of your  
4   job at S.F. General?

5           **PROSPECTIVE JUROR:**   Sure.   I'm a medical evaluations  
6   assistant.

7           **THE COURT:**   And what does that mean?

8           **PROSPECTIVE JUROR:**   San Francisco General is a trauma  
9   center, so we receive all emergencies and traumas in the -- in  
10   the area.   And I help with physician orders and nursing orders  
11   to help save patients' lives.

12          **THE COURT:**   Okay.

13          And you've been doing that for five years?

14          **PROSPECTIVE JUROR:**   Yes.

15          **THE COURT:**   Okay.

16          Okay.   Do you have any concerns about serving?

17          **PROSPECTIVE JUROR:**   I do not.

18          **THE COURT:**   Okay.   Let's go ahead and pass it then to  
19   Francois Rose.

20          **PROSPECTIVE JUROR:**   Yes, good morning.

21          **THE COURT:**   Good morning.

22          You were born in Montreal.   So when did you come to the  
23   States?

24          **PROSPECTIVE JUROR:**   '91.   And became citizen in 2016.

25          **THE COURT:**   See, this is the great thing.   You

1 already knew what my follow-up question was going to be, and  
2 that's why jury selection gets much quicker.

3 **PROSPECTIVE JUROR:** But I don't know what's next,  
4 though.

5 **THE COURT:** Are you still a professor at Stanford?

6 **PROSPECTIVE JUROR:** Yes. Yes.

7 **THE COURT:** Okay.

8 And by the way, congratulations on your upcoming  
9 anniversary. We'll totally being done by the 25th.

10 **PROSPECTIVE JUROR:** Thank you so much.

11 **THE COURT:** Now, you've got some, you know, thoughts  
12 about intellectual property. Again, this is a patent case in  
13 a semiconductor industry.

14 Do you have any concerns about serving?

15 **PROSPECTIVE JUROR:** No.

16 **THE COURT:** By the way, it's my 35th, too, so there  
17 you go.

18 **PROSPECTIVE JUROR:** Congratulations.

19 **THE COURT:** All right.

20 And then we have Christine Sun?

21 **PROSPECTIVE JUROR:** Yes. Good morning.

22 **THE COURT:** Good morning.

23 Okay. And I take it you don't -- you are a normal  
24 pharmacist, right? We all know what you do, I think.

25 **PROSPECTIVE JUROR:** The only addition is narcotic

1 auditing, but other than that, it's pretty -- a staff  
2 pharmacist role.

3 **THE COURT:** Okay. And then, you know, you obviously  
4 know what an RFID tag is.

5 **PROSPECTIVE JUROR:** Yes.

6 **THE COURT:** You -- many of us use this kind of  
7 technology. But it doesn't sound like you have any  
8 specialized expertise.

9 **PROSPECTIVE JUROR:** No.

10 **THE COURT:** Do you have any concerns about serving?

11 **PROSPECTIVE JUROR:** No, I do not.

12 **THE COURT:** All right. So we're going to go 30 more  
13 minutes, and then we'll take a break.

14 I am going to let each side ask questions for 15 minutes.  
15 They're on a clock. I guarantee you that they would have  
16 loved to have spent at least an hour or more talking to you  
17 all. They don't get to do that. So do not hold it against  
18 them if they don't ask you any questions because they're on  
19 strict time deadlines. Okay?

20 So -- we'll start with Mr. Al-Salam. You're on the clock,  
21 sir. You may proceed.

22 **MR. AL-SALAM:** Thank you, Your Honor.

23 Does Your Honor care if I ask general questions or --

24 **THE COURT:** You've got 15 minutes. If it's  
25 objectionable, I'll -- I'll strike the question.

1           **MR. AL-SALAM:** First of all, I heard Mr. Blum, you --  
2       let's start with you. I think you said that patents can --  
3       can tamper down innovation.

4           Did you say something like that?

5           **PROSPECTIVE JUROR:** Yeah, words to that effect.

6           **MR. AL-SALAM:** And so do you not -- do you feel there  
7       are too many patents out there?

8           **PROSPECTIVE JUROR:** Not that there's --

9                       (Off-the-record discussion.)

10          **THE COURT:** That's better. Thank you.

11          **PROSPECTIVE JUROR:** Sorry.

12          I'm sorry, could you repeat the question.

13          **MR. AL-SALAM:** Sure.

14          I think you were just about to say you don't think there  
15       are too many patents out there, but you think that they can  
16       stifle innovation.

17          **PROSPECTIVE JUROR:** Yes. I don't necessarily know  
18       how many patents there are or if there's too many or too  
19       little, but just maybe the way we are using them is -- could  
20       be changed a little bit to allow more -- more innovation.

21          **MR. AL-SALAM:** Does anybody else have any feelings  
22       about whether the patent office grants too many or too few  
23       patents?

24          I know your husband gets -- gets a job from that, but does  
25       anybody else have any feelings about patents generally?

1 Yes. Mr. Bass.

2 **PROSPECTIVE JUROR:** It's the way you asked that  
3 second part of it. It's not a question of the volume of them.  
4 It goes back to the original question that I raised, which was  
5 the appropriateness of some of the patents. And even some of  
6 the people who actually take them out, you know, 'cause I've  
7 heard stories of people who've taken them out as sort of like  
8 a -- a financial thing. They -- they just want to hold onto  
9 that for financial reasons and so I've seen that happen.

10 I don't -- specifics, I don't have that.

11 **MR. AL-SALAM:** Ms. -- is it Banishahab?

12 Yes, you're an architect.

13 Have you ever had a situation where somebody's copied your  
14 design or accused you of copying a design?

15 **PROSPECTIVE JUROR:** I work with -- in a large firm,  
16 and we see like smaller companies, they try to copy. But it's  
17 never going to be the same.

18 **MR. AL-SALAM:** Do you have any strong feelings about  
19 whether those designs should be available to anyone or whether  
20 someone should be able to protect their designs in  
21 architecture?

22 **PROSPECTIVE JUROR:** Well, in school we used to be  
23 upset when someone copied our design just because of the  
24 competition. But we've been told that maybe like, first, it's  
25 your idea, your brain so it's not copyable to, like, the

1 exact, like, design. But I don't think -- I don't think --  
2 for our work, I don't think they can copy exact, like,  
3 outcome --

4 **MR. AL-SALAM:** They aren't --

5 **PROSPECTIVE JUROR:** -- and quality and details of the  
6 work.

7 **MR. AL-SALAM:** Does anybody else have just general  
8 feelings about whether patents should be more available to be  
9 used?

10 **PROSPECTIVE JUROR:** Can you ask that question --

11 **MR. AL-SALAM:** Sure.

12 **PROSPECTIVE JUROR:** -- maybe a little better?

13 **MR. AL-SALAM:** You know, there's some people in the  
14 tech industry that worry that maybe -- maybe patents are  
15 preventing more -- more use or innovations and other people  
16 think, no, if you come up with an idea, you should be able to  
17 protect it. It's your idea. Somebody shouldn't be able to  
18 copy it.

19 Does anybody have any feelings going either of those ways?

20 Yes?

21 **PROSPECTIVE JUROR:** If it is truly intellectual  
22 property, then I think it needs to be protected.

23 **MR. AL-SALAM:** And you're in music?

24 **PROSPECTIVE JUROR:** Yes, I'm a composer. So I think  
25 that that's the one who's talking now.

1           **MR. AL-SALAM:** Okay.

2           And so you don't like it if people take your music or  
3           compositions without authorization?

4           **PROSPECTIVE JUROR:** No.

5           Before to go to your next question, I would at least like  
6           to add that while I believe that people do need the right to  
7           protect their creative whatevers, whether it's music or  
8           technology or whatever, I also question the length of -- of  
9           protections. And -- and I think about pharmaceuticals when it  
10          comes to that. But, you know, so --

11          **MR. AL-SALAM:** I see.

12          So Ms. Poon, you do know one of the witnesses -- or your  
13          husband.

14          Do you know that witness personally?

15          **PROSPECTIVE JUROR:** No, no. I just heard his name.

16          **MR. AL-SALAM:** Okay.

17          **PROSPECTIVE JUROR:** When I saw it, you know, it's not  
18          a -- to me it wasn't a common name, so it stuck out.

19          **MR. AL-SALAM:** And so do you think you could judge  
20          fairly that person's testimony versus another person's  
21          testimony if they disagreed?

22          **PROSPECTIVE JUROR:** Like I said before, because he  
23          works with my husband, I would try to put aside that bias.

24          **MR. AL-SALAM:** Ms. Pelican, I think you said in your  
25          review that you feel sorry for companies that are being sued

1 for money because it might hurt the company.

2 Do you remember saying that?

3 **PROSPECTIVE JUROR:** Yes.

4 **MR. AL-SALAM:** Do you feel the same way if they're a  
5 large company?

6 **PROSPECTIVE JUROR:** The same, small or big.

7 **MR. AL-SALAM:** You just don't think they should have  
8 to pay money?

9 **PROSPECTIVE JUROR:** Yes.

10 **MR. AL-SALAM:** If it's a lawsuit between a larger and  
11 a smaller company, would that change things in any way?

12 **PROSPECTIVE JUROR:** No. I think it's the same, small  
13 or big company.

14 **MR. AL-SALAM:** Okay.

15 Ms. Sun, you mentioned on your questionnaire that you feel  
16 patents cater to people with money.

17 In a case like this where they're both public companies,  
18 do you think it favors one company versus the other?

19 **PROSPECTIVE JUROR:** No. I think I was more thinking  
20 like pharmaceuticals.

21 **MR. AL-SALAM:** Okay.

22 And I think you also mentioned you don't feel comfortable  
23 coming up with a dollar amount to award in a lawsuit.

24 **PROSPECTIVE JUROR:** Yeah, I just don't really feel  
25 comfortable with that.



1           **MR. AL-SALAM:** Is it because you're just worried  
2 about getting the amount right?

3           **PROSPECTIVE JUROR:** I don't know.

4           **MR. AL-SALAM:** Okay. And I think you mentioned your  
5 religious views might affect your jury service.

6           **PROSPECTIVE JUROR:** I wasn't sure what kind of case  
7 it would be.

8           **MR. AL-SALAM:** Excuse me?

9           **PROSPECTIVE JUROR:** I wasn't sure what kind of case  
10 it would be.

11           **MR. AL-SALAM:** Okay.

12           **PROSPECTIVE JUROR:** I don't think it would affect  
13 this one.

14           **MR. AL-SALAM:** Ms. Gonzalez, you work for a  
15 government agency, correct?

16           **PROSPECTIVE JUROR:** Correct.

17           **MR. AL-SALAM:** Do you think that would affect your  
18 views at all, positive or negative, regarding the U.S. Patent  
19 and Trademark Office?

20           **PROSPECTIVE JUROR:** No.

21           **MR. AL-SALAM:** Okay.

22           Mr. Hu, do you like digging into technical details?

23           **PROSPECTIVE JUROR:** I can do it, but I wouldn't say I  
24 like it.

25           **MR. AL-SALAM:** You don't like it.

1 Do other people -- like, you know, I remember I always  
2 used to play this cartoon thing where you have to look at two  
3 cartoons and try to find the differences.

4 Does anybody really like doing that, like trying to find  
5 the differences in things?

6 Okay. That's good.

7 How about other people -- other people think they're more  
8 big-picture thinkers?

9 Anybody think of themselves more as a big picture thinker  
10 versus a really detailed person that can't see the forest  
11 through the trees, or are you more looking for the forest for  
12 the trees?

13 **UNIDENTIFIED SPEAKER:** Do both.

14 (Off-the-record discussion.)

15 **THE COURT:** So the other thing is, if you use the  
16 juror number, that will help her.

17 **MR. AL-SALAM:** Okay.

18 Let me see, I may be done.

19 Those are all my questions, Your Honor. Thank you very  
20 much.

21 **THE COURT:** Thank you.

22 Mr. Hendershot, you have 15 minutes, sir.

23 **MR. HENDERSHOT:** Thank you, Your Honor. You've done  
24 a great job, as have you. I don't think I'm going to take the  
25 15.

1 Mr. Rose, the composer, so you said your intellectual  
2 property has been impacted by the Internet.

3 Can you elaborate on that a little bit?

4 **PROSPECTIVE JUROR:** Yes. So it has been for composer  
5 a double side. So we got something which is absolutely  
6 fantastic, exposure, thanks to the Internet. But we had to  
7 pay a big price because today people expect music for free.  
8 So if people don't buy any -- in fact, I don't know if there  
9 are any dinosaurs in the room. Who is -- remember last time  
10 bought a CD or DVD? I'm probably the only one. So this is  
11 the price that composers have paid. And so -- so why  
12 intellectual property I feel needs to be protected.

13 **MR. HENDERSHOT:** I actually have an audio cassette in  
14 my car. I know those well.

15 So given your thoughts and your views, do you think you  
16 can remain objective and open-minded and hear the evidence  
17 from both parties before reaching --

18 **PROSPECTIVE JUROR:** I think I can.

19 **MR. HENDERSHOT:** -- a decision?

20 **PROSPECTIVE JUROR:** I think I can.

21 **MR. HENDERSHOT:** Okay.

22 Ms. Richard.

23 **PROSPECTIVE JUROR:** Hi.

24 **MR. HENDERSHOT:** Hi, how are you?

25 **PROSPECTIVE JUROR:** Good.

1           **MR. HENDERSHOT:** You mentioned you considered a  
2 business trademark at one point in your survey.

3           Do I have that right?

4           **PROSPECTIVE JUROR:** Yes.

5           **MR. HENDERSHOT:** Oh, good. Can you elaborate on that  
6 a little bit?

7           **THE COURT:** We can't hear you. Just a little bit  
8 closer.

9           **PROSPECTIVE JUROR:** I'm in healthcare but I went to  
10 business school initially at Berkeley, and so my passion is in  
11 business. And although I seem to be a nurse, I have a CPR  
12 company and I do yoga for fun, which I may end up monetizing.  
13 And it comes with a trademark and so I've looked into that,  
14 but nothing further.

15           **MR. HENDERSHOT:** Okay. And so you've looked into it  
16 some.

17           What -- do you think your looking into that and what  
18 you've learned would impact your ability to keep an open mind  
19 and follow the Court's instructions about the law?

20           **PROSPECTIVE JUROR:** Absolutely.

21           **MR. HENDERSHOT:** No problem with that?

22           **PROSPECTIVE JUROR:** No problem.

23           **MR. HENDERSHOT:** Okay.

24           Ms. Poon, you talk to patent litigators at home. I'm  
25 sorry you've got to deal with one here.

1           Given your husband's job and your exposure to it -- and I  
2           don't know what he does or who he represents -- do you think  
3           you would have an inclination or a leaning to favor a  
4           plaintiff versus a defendant?

5           **PROSPECTIVE JUROR:** No.

6           **MR. HENDERSHOT:** Do you think you could keep an open  
7           mind and wait for all of the evidence to come in and render a  
8           decision based on a full picture with an open mind?

9           **PROSPECTIVE JUROR:** Yes.

10          **MR. HENDERSHOT:** Okay.

11          Ms. Pelican, so I've heard some of your answers, and I  
12          wanted to ask you, you have some views, but would those views  
13          prevent you from taking an objective look at the evidence,  
14          weighing it, and following the Court's instruction and making  
15          a decision with an open mind one way or the other?

16          **PROSPECTIVE JUROR:** I -- I'm not sure I'm  
17          understanding the question.

18          **MR. HENDERSHOT:** It was --

19          **PROSPECTIVE JUROR:** I'm sorry.

20          **MR. HENDERSHOT:** It was kind of a long one. Let me  
21          shorten it a little bit.

22          **PROSPECTIVE JUROR:** I'm sorry.

23          **MR. HENDERSHOT:** Do you think, despite your views and  
24          the answers you've given, you can keep an open mind in this  
25          case?

1           **PROSPECTIVE JUROR:** Well, I'll -- I guess. I'll try.

2           **MR. HENDERSHOT:** Do you think you'll have any issue  
3 looking at the evidence yourself and following the  
4 instructions the Court -- the judge gives you on the law?

5           **PROSPECTIVE JUROR:** Like my decision?

6           **MR. HENDERSHOT:** Yeah.

7           Do you think you'll be able to base your decision on and  
8 follow the instructions that the judge gives you?

9           **PROSPECTIVE JUROR:** I will. Yeah, I could.

10          **MR. HENDERSHOT:** Okay.

11          And then a broader one. And this is going to seem really  
12 oddly specific, but I've seen it come up in my career a few  
13 times. One of issues in this case is going to be whether the  
14 patents that are asserted are valid or invalid. And that  
15 question is whether the patent office, the United States  
16 Patent and Trademark Office should have issued those to begin  
17 with.

18          Now some people have really strong feelings about  
19 government agencies and think it's a government agency, they  
20 know what they're doing, they get it right all the time or  
21 nearly all the time. And the judge will tell you a number of  
22 reasons why a patent may or may not be invalid. I don't want  
23 to get into that.

24          But for purposes of this, does anyone have strong feelings  
25 that a government agency, like the United States Patent

1 Office, gets things right all the time to the point where you  
2 couldn't assess yourselves whether this patent is valid and  
3 should have issued?

4 And what I've heard sometimes is, well, the patent office  
5 issued this patent, they had to get it right. It's got to be  
6 valid.

7 Does anybody have strong feelings of deference to a  
8 government agency like that or to the patent office where you  
9 think there's no way they got something wrong?

10 **PROSPECTIVE JUROR:** Can I just ask you a process  
11 question?

12 **THE COURT:** Hold on. Hold on.

13 Okay. Go ahead.

14 **PROSPECTIVE JUROR:** For me, in principle, I don't  
15 have a problem, but I don't know the process. For example, if  
16 something has been issued and can be contested, is there a  
17 process that could have prevented -- do you see where I'm  
18 aiming at?

19 Is that -- is there a process that could have prevented  
20 where we get at one point where we don't meet each other?

21 **MR. HENDERSHOT:** So I think that there are. And I  
22 don't want to get too far afield with processes, but there is  
23 a process by which a patent is reviewed at the patent office  
24 and it issues as a patent.

25 And then it issues as a patent so someone can assert it.

1 But an open question remains for you all to decide, whoever  
2 gets seated, should that patent have issued? Was it new? Is  
3 it valid? And that's our chance to present that question for  
4 you to decide.

5 And my question and concern is sometimes people think,  
6 look, it's a government agency, they know what they're doing,  
7 they're going to get it right, so I don't really want to  
8 question that. I think you'll be instructed by the judge in  
9 this case that you need to consider that, and I just want to  
10 make sure everyone feels they can keep an open mind about  
11 that.

12 Raise your hand if you have a problem with that, and I'm  
13 happy to follow up.

14 Okay.

15 With that, I thank you guys for your time.

16 **THE COURT:** All right.

17 So I have one follow-up, if we'll pass it to Ms. Poon,  
18 before our break.

19 It's just -- a question I want to ask you occurred to me  
20 while I was listening to the lawyers. Let's say  
21 hypothetically you're on the jury and that individual  
22 testifies.

23 Are you the kind of person who could independently  
24 evaluate, and if you think they did a terrible job, after this  
25 is all said and done and I release you and you can talk to



1 your husband, you could then tell your husband what are you  
2 thinking, that witness is terrible, he's totally not  
3 convincing to juries? Could you do that?

4 **PROSPECTIVE JUROR:** Hypothetically?

5 **THE COURT:** Hypothetically if you did not believe  
6 him, could you trust and move forward with your own  
7 independent belief knowing that at some time in the future you  
8 could, in fact, tell your husband that witness that you're  
9 talking to is not believable?

10 **PROSPECTIVE JUROR:** Yes.

11 **THE COURT:** Okay.

12 **PROSPECTIVE JUROR:** I believe so.

13 **THE COURT:** So just because your husband's working  
14 with him -- I mean, I have to tell you, lots of lawyers would  
15 like to be jurors 'cause they like to see what's actually  
16 happening back there.

17 **PROSPECTIVE JUROR:** Oh, he would like to take my  
18 place right now, I'm sure, but that wouldn't work out here in  
19 this case.

20 **THE COURT:** Exactly. But if you did serve, you would  
21 obviously have the ability, right, to tell him if you didn't  
22 believe that juror or that particular witness, right?

23 **PROSPECTIVE JUROR:** Correct.

24 **THE COURT:** All right.

25 So I'm going to let you all take a short break. Before I

1 let you go, I've got some "do not" orders for you. So this  
2 is -- let's move to my slides on do not. You're going to be  
3 released for a -- for a recess.

4 (Demonstrative published.)

5 **THE COURT:** And while and until you are excused, it  
6 is incredibly important that you not talk to anyone.

7 First slide.

8 Do not discuss this case or any matters with it with any  
9 person in any way during your break or otherwise until you are  
10 released. Not in writing, by phone, smart phone. No email,  
11 no text, no chat rooms, no blogs, no websites, no social  
12 media, like Facebook, Snapchat, LinkedIn, YouTube, Twitter or  
13 any other new thing that might be out there. Nothing. This  
14 applies to everyone.

15 Next slide.

16 (Demonstrative published.)

17 **THE COURT:** Do not talk to your fellow jurors, the  
18 participants, the witnesses, the lawyers, spectators, family,  
19 friends, your employer. If someone asks you, just tell them  
20 you're seated as a juror and that's all you can say right now.

21 Next slide.

22 (Demonstrative published.)

23 **THE COURT:** Do not do any research or investigation  
24 on this case or any topics that we have discussed during this  
25 voir dire process. Again, you are not released and we need to

1 have your own independent opinions.

2 Next slide.

3 (Demonstrative published.)

4 **THE COURT:** You are ordered not to read, watch, or  
5 listen to any news or media accounts or anything to do with  
6 this case. I do not know whether this case is getting picked  
7 up by the news, but it is not uncommon for federal cases to  
8 get picked up.

9 Okay. So during the break, what are you going to do?  
10 You're going to check your email, get a snack, go to the  
11 bathroom. Do what you want to do as long as it has nothing to  
12 do with this case.

13 (Demonstrative published.)

14 **THE COURT:** If something happens, and I don't think  
15 it will, but if something accidentally happens, please let me  
16 know. I don't anticipate any violation of the rule, but it is  
17 important that each side have a fair trial. And if you  
18 violate these rules, you could impact the ability for someone  
19 to get a fair trial. Okay?

20 So it is 10:55. We are going to stand in recess for 30  
21 minutes until 11:25. All prospective jurors should leave the  
22 courtroom because I need to speak with the lawyers while you  
23 are gone, and the parties. We have work to do while you're  
24 gone.

25 When you come back, do not come back into the box. You

1 will all sit in the gallery. Okay?

2 So any questions before I release you for 30 minutes?

3 Yes, sir?

4 Okay. You want to chat with me about something? So you  
5 stand back.

6 All right.

7 Everyone else is released for 30 minutes only. We'll  
8 stand in recess with the jury.

9 (The following proceedings were heard out of the presence  
10 of the jury venire:)

11 **THE COURT:** All right. Mr. Bass, I can't talk to you  
12 alone, but you can come to this front mic here.

13 Everyone else can be seated.

14 **PROSPECTIVE JUROR:** Thank you, Your Honor.

15 I have prostate cancer, and I have two meetings, one next  
16 Monday. I didn't think about it until somebody talked about  
17 their schedules for going forward.

18 **THE COURT:** So Monday, this coming Monday?

19 **PROSPECTIVE JUROR:** The 10th and then on the  
20 following Monday. I have two appointments --

21 **THE COURT:** Okay.

22 **PROSPECTIVE JUROR:** -- that took months to get.

23 **THE COURT:** It's okay because next Monday we're not  
24 in session. So you can make that Monday.

25 **PROSPECTIVE JUROR:** And then the following one we're

1 expected to be --

2 **THE COURT:** You should be done. And if we're not  
3 done, we'll work around your schedule.

4 **PROSPECTIVE JUROR:** It's just all of a sudden I went,  
5 ah.

6 **THE COURT:** I appreciate you saying that. Thank so  
7 much.

8 (Bass left).

9 **THE COURT:** Okay. Can I have the lead lawyers at the  
10 mics, please.

11 So the record will reflect that the jury has gone.

12 You're going to be asked to -- to make strikes very soon  
13 so people at your table should be figuring this out.

14 I am going to strike the following: Mr. Hernandez. I  
15 just don't think that his English is good enough and that  
16 concerns me. If it was some different kind of case, I might  
17 not be so concerned, but in this case, I am concerned. So  
18 Juror 14, Mr. Hernandez, is struck for cause.

19 Ms. Onywera, who's running that Bible study for one week,  
20 the timing just didn't work. I'm striking her for hardship.  
21 Don't need to have 40 kids without something to do.

22 And then the other person I'm going to strike is  
23 Ms. Preston. This is -- she's a problem juror. I thought  
24 that in her survey questions. She's -- I like jurors to have  
25 a good experience, and she created more excuses today. I am

1 not going to dignify much of what she said with a response,  
2 and did not do that today, in terms of her questionnaire. But  
3 I'm not going to see her in one of my juries. So Ms. Preston  
4 is excused for cause.

5 Okay. Are there others that you want me to consider for  
6 cause, hardship?

7 I can tell you, I'm not excusing Ms. Poon. You can make a  
8 record later if you'd like. And I'm not going to excuse -- is  
9 it --

10 **MR. HENDERSHOT:** Mr. Bass.

11 **THE COURT:** Mr. Bass. I'm not going to excuse  
12 Mr. Bass.

13 So you can make a record later if you like with respect to  
14 those two.

15 Are there others that you want me to consider?

16 **MR. AL-SALAM:** The only one for plaintiff,  
17 Your Honor, is Ms. Pelican who said she couldn't award  
18 plaintiffs money whether it was a large or small company.

19 **THE COURT:** I disagree. I think that she ultimately  
20 will, but I'm not going to excuse her.

21 **MR. AL-SALAM:** Okay.

22 **MR. HENDERSHOT:** None from defendants, Your Honor.

23 **THE COURT:** Okay. So you have -- I'll give you about  
24 five, six minutes.

25 **MR. HENDERSHOT:** Thank you, Your Honor.

1           **MR. AL-SALAM:** May I run to the restroom?

2           **THE COURT:** You may, and you can use this restroom  
3 here.

4           Okay. All right. We'll stand in recess for about  
5 five minutes.

6           (Recess taken at 11:00 A.M.; proceedings resumed at  
7 11:07 A.M.)

8           **THE COURT:** So just so that everybody's clear, the --  
9 the eight that are on the jury right now are number 2,  
10 Richard; number 3, Sun; number 4, Banishahab; number 6,  
11 Gonzalez; number 8, Tiffany; number 10, Pelican; number 11,  
12 Rose; and number 13, Blum. Those are our eight at this point.  
13 Plaintiff, first peremptory.

14           **MR. AL-SALAM:** So, Your Honor, I'm just curious. If  
15 we go through more than that are in here, then is there a voir  
16 dire for the -- for the next ones in line? Or are we taking  
17 the next ones line without --

18           **THE COURT:** So if you -- if I don't have a jury -- so  
19 let me be very clear. I have more jurors. I can --

20           **MR. AL-SALAM:** Yeah.

21           **THE COURT:** -- voir dire them.

22           But if somebody passes -- if I have two passes, I have a  
23 jury. So -- and I think I explained this before. So if you  
24 pass and defense has another strike, then you can -- and you  
25 have strikes left, then you can use it. But once I get two

1 strikes, I have a jury. So we'll see where we are.

2 **MR. AL-SALAM:** Okay.

3 **THE COURT:** And whether you have any strikes left or  
4 not.

5 All right. So I have --

6 **MR. AL-SALAM:** We'll strike Mr. Blum.

7 **THE COURT:** All right. Plaintiff strikes Mr. Blum,  
8 number 13. That puts Mr. Bass on the jury.

9 **MR. HENDERSHOT:** Defendants strike Mr. Bass, Juror  
10 15, Your Honor.

11 **THE COURT:** All right. Mr. Bass is struck by the  
12 defense, Juror 15.

13 So that -- that puts Sinan Alobaide on the -- on the jury.  
14 Plaintiff?

15 **MR. AL-SALAM:** Strike Ms. Pelican.

16 **THE COURT:** Pelican is struck; that's Juror 10.  
17 Plaintiff has one left.

18 Defense? And that -- that then puts Andrew Hu on the  
19 jury.

20 **MR. HENDERSHOT:** Defense strikes Juror 11, Mr. Rose.

21 **THE COURT:** Okay. Mr. Rose is struck by the defense,  
22 number 11. And that puts Ms. Poon on the jury.

23 Plaintiff has one strike left.

24 **MR. AL-SALAM:** So just so I understand, Your Honor,  
25 if both parties strike another person, then we're left with



1 too few jurors, correct?

2 **THE COURT:** Then you're left with whoever comes up  
3 next. You have their questionnaires, and all you have are  
4 for-cause challenges left. That's it. You do not have  
5 peremptories left.

6 **MR. AL-SALAM:** We will pass, Your Honor.

7 **THE COURT:** Plaintiff passes. Defense has one  
8 peremptory left.

9 **MR. HENDERSHOT:** Your Honor, defense strikes  
10 Juror number 8, Ms. Liu.

11 **THE COURT:** Okay. Defense used its last peremptory  
12 with Ms. Liu. And that then brings Trini Bautista.

13 **MR. AL-SALAM:** Pass, Your Honor.

14 **THE COURT:** Okay. That's our jury. So we will  
15 stand -- you'll have 10 minutes. Just be back so that the  
16 jury's -- so that you're here before the jury gets back at  
17 11:25.

18 When the jury gets back, we'll bring up these eight.  
19 We'll swear them in, and then I will -- then I'll let them  
20 take lunch. And -- well, you're ready to open, right?

21 **MR. AL-SALAM:** Yes, Your Honor.

22 **MR. HENDERSHOT:** Yes, Your Honor.

23 **THE COURT:** But that's another -- okay. I'll give  
24 them a 45-minute break. Then we'll come back, and we'll  
25 instruct and do openings today, witnesses tomorrow.

1           **MR. AL-SALAM:** Thank you, Your Honor.

2           **MR. HENDERSHOT:** Thank you, Your Honor.

3           **THE COURT:** Stand in recess.

4           **THE CLERK:** Court is in recess.

5           (Recess taken at 11:12 A.M.; proceedings resumed at  
6 11:25 A.M.)

7           (The following proceedings were heard in the presence of  
8 the jury venire:)

9           **THE COURT:** If the following jurors will come back  
10 up.

11           Bernadette Richard. Ms. Richard, you're going to take the  
12 first seat in the first row.

13           Christine Sun.

14           Behnaz Banishahab. And if you want to go the other way,  
15 you can take the second seat.

16           Elizabeth Gonzalez.

17           Sinan Alobaide. If you'll come forward and take the first  
18 seat in the back row.

19           Andrew Hu. And, Mr. Hu, you can go through the back. No.  
20 Take -- into the box, yeah.

21           **PROSPECTIVE JUROR:** Sorry. The next one?

22           **THE COURT:** In the box, yeah. And then Mr. Hu is  
23 going to sit next to you.

24           Rebecca Poon.

25           And Trina Bautista, you'll take the third seat in the

1 back.

2 And you'll take the fourth seat in the back. Okay.

3 If the eight of you will please stand to be sworn.

4 **THE CLERK:** Please raise your right hand.

5 (Jury sworn).

6 **THE CLERK:** Thank you. Please be seated.

7 **THE COURT:** Okay. So to the rest of you, you are now  
8 all excused from jury service. Again, thank you very much for  
9 honoring your citizenship, coming in today. I hope you have a  
10 wonderful day. You may all leave other than these eight.

11 (Rest of the venire leaving).

12 **THE COURT:** All right. It is 11:30. What we are  
13 going to do is take a 45-minute break so that you can go if  
14 you want to get a snack or something like that, a cup of  
15 coffee. When you come back, I'll have 30 to 45 minutes of  
16 instructions for you, probably 30 minutes. And then each side  
17 will give their opening statement, and then we'll be done for  
18 today.

19 Tomorrow, then, we'll come in. As I indicated, we'll  
20 start at 8:30, and they'll start taking evidence. So as just  
21 a reminder, we end at 1:40 in the afternoon. So you'll be  
22 done at 1:40 each day. You'll hear evidence on Thursday and  
23 Friday. Monday, we do not have court. And you'll hear more  
24 evidence Tuesday. You should have the case by Wednesday  
25 afternoon for deliberations. Okay? And then you'll be done

1 once you finish deliberating.

2 So, again, my do not orders still apply. Do not talk to  
3 anybody about anything related to this case. I'll give you  
4 some more instructions when you're back. But the courtroom  
5 deputy will take you into the jury room, give you your badges,  
6 and then you need to be back in the jury room no later than  
7 12:15. Okay?

8 So he's just going to give you a few instructions, but  
9 then you can go out, get something to eat if you want. We  
10 have snacks back there, but they may not be good the first  
11 day. And then -- and then I'll see you at 12:15.

12 Okay. All right.

13 **THE CLERK:** Please rise for the jury.

14 (The following proceedings were heard out of the presence  
15 of the jury:)

16 **THE COURT:** Okay. Any -- the record will reflect  
17 that the jury is gone.

18 Is there anything you want to discuss right now?

19 **MR. AL-SALAM:** Your Honor, I just want to confirm,  
20 did they already see the -- the patent video?

21 **THE COURT:** No. They'll see it when I instruct them.

22 **MR. AL-SALAM:** Thank you.

23 **MR. HENDERSHOT:** Nothing from defendant, Your Honor.

24 **THE COURT:** Okay. Well, Ms. Poon is not very happy,  
25 but I have to tell you I do have -- I really do not have

1 sympathy for any of you litigators. If your spouses get  
2 called, they should serve.

3 So we'll see you at 12:15. We'll stand in recess. You're  
4 welcome to stay in the courtroom if you need to test  
5 equipment, et cetera. We're off the record.

6 (Recess taken at 11:30 A.M.; proceedings resumed at  
7 12:24 P.M.)

8 **THE COURT:** -- without those computers, but I did --  
9 you have to have protectors -- that the jurors are not in the  
10 courtroom.

11 Mr. Al-Salam?

12 **MR. AL-SALAM:** Mr. Oliver's testimony, you wanted the  
13 excerpts of where he had testified in deposition on the  
14 subject matter that we were talking about.

15 **THE COURT:** Yes.

16 **MR. AL-SALAM:** Should those be sent to chambers by  
17 email, or what's the best way to submit them?

18 **THE COURT:** Well, unless you have copies for me right  
19 now, that would probably be the best way to submit them.

20 **MR. AL-SALAM:** Yeah. I don't have hard copies. We  
21 just have the email.

22 **THE COURT:** All right. Bring them in.

23 (The following proceedings were heard in the presence of  
24 the jury:)

25 **THE COURT:** All right. You may all be seated. You

## JURY INSTRUCTIONS

1 can be seated. Everyone's standing for you.

2 All right. You may all be seated.

3 Okay. I have some instructions for you. You have a  
4 binder there. We're actually going to go through that in a  
5 moment, and I have a patent video for you, which you'll see in  
6 a moment.

**JURY INSTRUCTIONS**

7  
8 **THE COURT:** But first, now that you are the jury in  
9 this case, it is my duty to instruct you on the law. It is  
10 your duty to find the facts from all the evidence in this  
11 case. To those facts, you will apply the law as I give it to  
12 you. And you must follow the law as I give it to you, whether  
13 you agree with it or not.

14 You must not be influenced by any personal likes or  
15 dislikes, opinions, prejudices, or sympathy. That means that  
16 you must decide the case solely on the evidence before you.  
17 You will recall that you took an oath to do so.

18 At the end of the trial, I will give you final  
19 instructions and it is the final instructions that will govern  
20 your duties.

21 Please do not read into these instructions or anything  
22 that I may say or do that I have an opinion regarding the  
23 evidence or what your verdict should be.

24 So let's start with patents.

25 This case involves a dispute relating to United States

## JURY INSTRUCTIONS

1 patents -- patents. Let me -- I'm going to take a moment to  
2 explain what a patent is and how one is obtained. Patents are  
3 granted by the United States Patent and Trademark Office,  
4 sometimes called the PTO. A valid United States patent gives  
5 the patent holder the right to prevent others from making,  
6 using, offering to sell, or selling the patented invention  
7 within the United States or from importing it into the  
8 United States during the term of the patent without the patent  
9 holder's permission.

10 A violation of the patent holder's rights is called  
11 infringement. The patent holder may try to enforce a patent  
12 against persons believed to be infringers by means of a  
13 lawsuit filed in federal court. To obtain a patent, one must  
14 file an application with the PTO. The process of obtaining a  
15 patent is called patent prosecution.

16 The PTO is an agency of the federal government and employs  
17 trained patent examiners who review applications for patents.  
18 The application includes what is called a specification, which  
19 means -- or which contains a written description of the  
20 claimed invention telling what the invention is, how it works,  
21 how to make it work, and how to use it so others skilled in  
22 the field will know how to make or use it.

23 The specification ends with one or more numbered  
24 sentences. And these are called patent claims. When the  
25 patent is eventually granted by the PTO, the claims define the

## JURY INSTRUCTIONS

1 boundaries of its protection and give notice to the public of  
2 those boundaries.

3 After the applicant files the application, a PTO patent  
4 examiner reviews the patent application to determine whether  
5 the claims are patentable and whether the specification  
6 adequately describes the invention claimed. In examining a  
7 patent application, the patent examiner reviews information  
8 about the state of the technology at the time the application  
9 was filed. As part of that effort, the patent examiner  
10 searches for and reviews information that is publicly  
11 available, submitted by the applicant, or both. That  
12 information is called prior art.

13 Prior art is defined by law, and I will give you, at a  
14 later time, in specific instructions, as to what constitutes  
15 prior art. However, in general, prior art includes things  
16 that existed before the patent invention or the -- before the  
17 claim invention that were publicly known or used in a publicly  
18 accessible way in this country or that were patented or  
19 described in a publication in any country.

20 The patent examiner considers, among other things, whether  
21 each claim defines an invention that is new, useful, and not  
22 obvious in view of the prior art. A patent lists the prior  
23 art that the examiner considered, and this list is called  
24 cited references. After the prior art search and examination  
25 of the application, the patent examiner then informs the



## JURY INSTRUCTIONS

1 applicant in writing what the examiner has found and whether  
2 any claim is patentable and thus will be, quote, allowed, end  
3 quote.

4 This writing from the patent examiner is called an office  
5 action. If the examiner rejects the claims, the applicant has  
6 an opportunity to respond and sometimes changes the claims or  
7 submits new claims. This process, which takes place only  
8 between the examiner and the applicant -- patent applicant,  
9 may go back and forth for some time until it the examiner is  
10 satisfied that the application and claims meet the  
11 requirements for a patent.

12 Sometimes patents are issued after appeals with the PTO or  
13 to the court. The papers generated during this time of  
14 communicating back and forth between the patent examiner and  
15 the applicant make up what is called the prosecution history.  
16 All of this material becomes available to the public no later  
17 than the date when the patent issues.

18 A patent is presumed to be valid, but the fact that the  
19 PTO grants a patent does not necessarily mean that any  
20 invention claimed in the patent, in fact, deserves the  
21 protection of a patent.

22 For example, the PTO may not have had available to it all  
23 the information that will be presented to you. A person  
24 accused of infringement has the right to argue in federal  
25 court that a claimed invention in the patent is invalid

## JURY INSTRUCTIONS

1 because it does not meet the requirements for a patent.

2 As I mentioned, this case is about patents. And before I  
3 summarize the parties' opinion, I'm going to show you a short  
4 video called "The Patent Process." This is an overview for  
5 jurors -- stop, not quite yet -- that has been prepared by the  
6 Federal Judicial Center for the purposes of providing jurors  
7 like you some background on the patent system.

8 Now, I'm going to stop it or -- my courtroom deputy's  
9 going to stop it, and then, if you will, open up your binders,  
10 you should -- after the protective sheet -- you have a  
11 document there. It says, "The Patent Process: An Overview  
12 for Jurors."

13 Do you see that? Okay.

14 So you're going to turn to the second page, and this is  
15 the patent that's going to be discussed in the jury video. So  
16 we're going to stop it. We're going to pause it so that we  
17 can go back and forth, and I can show you where the stuff is.  
18 Okay. It goes pretty fast in the video otherwise. All right.

19 Let's go ahead.

20 (Patent video was played.)

21 **THE COURT:** Okay. So keep -- no, not quite yet.  
22 Keep going, Edwin, another 10 seconds.

23 (Patent video was played.)

24 **THE COURT:** Okay. Stop there.

25 All right. So do you see on your patent, you've got it on

## JURY INSTRUCTIONS

1 the top right hand, that's the number, right? The date of the  
2 patent is right underneath it.

3 Do you see that?

4 And then the title is there on the left, right?

5 And the inventor is right underneath it, okay?

6 All right. Let's keep going.

7 (Patent video was played.)

8 **THE COURT:** Okay. So now turn your page. And I  
9 should have the record reflect a couple of things. One is  
10 that I told the court reporter she didn't have to transcribe  
11 the video. You all have that video. Although, she's  
12 transcribing what I said.

13 And the second thing, just a point of personal pride,  
14 Jeremy Fogel, who's talking, he was a judge in our district  
15 many years ago. He used to sit down in San Jose. He's since  
16 retired from the bench, so he's not -- no longer doing this.  
17 But this was his -- we do a lot of patent cases in this  
18 district, and this was something he really wanted to do to  
19 explain this process to jurors. He's a terrific trial judge.

20 All right. So the next page, if you go to number 3,  
21 Page 3, you'll see -- is everybody there? Where it has the  
22 big 1, the first column?

23 So on that page, you have two columns. That's where we  
24 are. Everybody with me? Yeah?

25 Okay. Go ahead.

## JURY INSTRUCTIONS

(Patent video was played.)

**THE COURT:** All right. So it's just the little summary is the abstract.

Okay. Keep going, Ed.

(Patent video was played.)

**THE COURT:** And now we're with him again, and it says -- do you see highlighted -- he'll talk about that.

It says, "We claim." This is the important part of this patent, which is where they identify their claims.

All right. Go ahead.

(Patent video was played.)

(Pause in the proceedings.)

**THE COURT:** Okay. So a few more instructions for you. As I mentioned already, right, the plaintiff here is Impinj, Inc. The defendant is NXP U.S.A.

This case involves two patents. The first, U.S. Patent Number 8,115,597, names Ronald Oliver, John Hyde, and Charles Peach as the inventors. For convenience, the parties and I will often refer to this patent by the last three numbers of its patent number; that is the '597 patent.

The second, Patent Number 9,633,302, names Harley Heinrich as the inventor. And, again, we'll refer to this patent by the last three numbers of its patent number, the '302 patent.

Impinj has filed suit in this court, and in this trial it seeks monetary damages from NXP for allegedly infringing these

## JURY INSTRUCTIONS

1 two patents.

2 You're going to be here for a number of days, and these  
3 folks are going to give you a lot of details. So I'm just  
4 going to give you a snippet as you don't need to hear from me  
5 on this stuff for too, too long. But, in short, Impinj  
6 alleges that NXP directly infringes the '597 patent because  
7 NXP sells, offers for sale, and imports products that are  
8 covered by claims 1, 12, and 15 of the '597 patent.

9 Impinj claims those products are the UCODE 8, UCODE 8m,  
10 UCODE 9 products, and NXP denies that it is infringed and also  
11 argues that the claims are invalid. Now, I have the parties  
12 in the book that I've given you. If you'll turn past the  
13 first tab, right, they have -- identified those claims for  
14 you.

15 Do you see that in your binder?

16 All right. If you go to the next pad -- tab, you'll see  
17 the actual patent is there. You don't have to, obviously,  
18 memorize any of this. This is all going to be for your  
19 convenience.

20 And if you flip to the very end, you'll see that's where  
21 the claims begin, and they're highlighted.

22 Okay. Very end -- so we're still on Tab 1. Okay? The  
23 '597 patent is the first patent in your book. Right before  
24 the blue sheet of paper, those last few pages, that's where  
25 the claims are for the '597 patent.

## JURY INSTRUCTIONS

1           Okay. Here we go. Look -- look up here, then. There's  
2           the '597 patent, right? You've got that behind your tab,  
3           first tab? Okay. There are two patents there, the '597, and  
4           behind the blue sheet, that's the '302 patent.

5           The claims are always at the end of the patent, so if you  
6           look at the last couple pages, you'll see some highlighting.  
7           That's where the claims are. Okay?

8           All right. So now, the '302 patent, again, Impinj argues  
9           that NXP directly infringes, again, because it claims that NXP  
10          sells, offers for sale, and imports products that are covered  
11          by claims 1, 3, 4, and 7 of the '302 patent. And Impinj  
12          claims those products include the UCODE 7 with big pads, the  
13          UCODE 8, the UCODE 8M, and the UCODE 9 products.

14          The Court previously found, as a matter of law, that NXP  
15          products do infringe the claims. But for purposes of this  
16          trial, NXP also argues that the claims are invalid, and you  
17          will decide that issue.

18          Next, Impinj claims that NXP's also willfully infringed  
19          each of the asserted claims of both the '597 patent and the  
20          '302 patent.

21          With respect to the '597 patent, it will be your job to  
22          decide whether claims 1, 12, and 15 of that patent have been  
23          infringed and whether they are invalid.

24          With respect to the '302 patent, your job is to decide  
25          whether claims 1, 3, 4 and 7 of that patent are invalid.

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1 Now, depending on your answers to those questions, you may  
2 or you may need to decide whether to award monetary damages to  
3 Impinj to compensate it for any infringement. You'll also  
4 need to decide whether any infringement was willful.

5 However, if you decide that infringement was willful, that  
6 decision does not and should not affect any damages awards you  
7 give. I will take that information into account later. To  
8 make these decisions, you will need to understand the patent  
9 claims. And as I mentioned, the patent claims are the  
10 numbered sentences at the end of the patent that describe the  
11 boundaries of the patent's protection. It is my job to  
12 explain to you the meaning of any language in that claim that  
13 needs interpretation.

14 I have determined the meaning of one term in the '302  
15 patent, and you'll be given a document to explain that  
16 meaning. You are to apply my definition of this term  
17 throughout this case. However, my interpretation of the  
18 language of this claim should not be taken as an indication  
19 that I have a view regarding any issues you are -- you are  
20 asked to decide.

21 For any claim term for which I have not provided a  
22 definition, you should apply its ordinary meaning. And I'll  
23 provide you with more detailed instructions on the meaning of  
24 the claims before you retire to deliberate.

25 There are two -- as -- as Judge Fogel mentioned, there are

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1 two burdens of proof in this case. The first is preponderance  
2 of the evidence. And that means that you must be persuaded by  
3 the evidence that the claim is probably more true than not.  
4 You should base your decision on all the evidence regardless  
5 of who presents it.

6 However, when a party has the burden of proving any claim  
7 or defense by clear and convincing evidence that means that  
8 the party must present evidence that leaves you with a firm  
9 conviction or belief that it is highly probable that the  
10 factual contentions of claim or defense are true.

11 This is higher standard than preponderance of the evidence  
12 but is lower than the criminal standard where we require proof  
13 beyond a reasonable doubt.

14 So what is the evidence you're to consider?

15 The evidence that you are to consider includes the sworn  
16 witness testimony or the sworn testimony of any witness, the  
17 exhibits that are admitted into evidence and that you will  
18 have with you back in the jury room, any facts to which the  
19 lawyers have agreed, and any facts that I instruct you to  
20 accept as proof.

21 Now, with respect to the facts to which they've already  
22 agreed, if you will turn to your last tab in your binder, the  
23 first page gives you the constructions of -- that is, the  
24 meanings of certain terms, which we'll talk about later. And  
25 after the pink page, you'll see a whole bunch of undisputed



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1 facts. I'll give you more instructions on that later but the  
2 parties will refer to those and ultimately they'll -- you'll  
3 be instructed that all of those are deemed to be proved. It  
4 just makes a trial go faster. Okay?

5 So what's not evidence?

6 In reaching your verdict you may consider only the  
7 testimony and exhibits received into evidence, but certain  
8 things are not evidence and you may not consider them in  
9 deciding what the facts are.

10 First, arguments and statements by the lawyers are not  
11 evidence. The lawyers are not witnesses. What they may say  
12 in their opening statements and closing arguments and at other  
13 times is just there to help you interpret the evidence, but  
14 it's not evidence.

15 If your memory of the facts control -- or if your -- if  
16 the facts as you remember them differ from the way the lawyers  
17 state them, your memory of them controls.

18 Questions and objections by the lawyers are not evidence.  
19 The lawyers have a duty to their clients to object when they  
20 believe a question's un -- improper under the Rules of  
21 Evidence. And you should not be overly influenced or be  
22 influenced at all by the objection or the Court's ruling on  
23 it.

24 If testimony is excluded or stricken, you're instructed to  
25 disregard it and cannot consider that as evidence.

## JURY INSTRUCTIONS

1 In addition, some evidence may be received for only a  
2 limited purpose. And when I instruct you to consider it for  
3 that limited purpose, you may do so. When I do that, I'll  
4 stop and I will try to explain it to you. That is, I'll  
5 explain my evidentiary ruling.

6 You may not consider the evidence for any other purpose.

7 Anything you see or hear when Court is not in session is  
8 not evidence. You are to decide the case solely on the  
9 evidence received at trial. It is because you all to have see  
10 and hear the exact same things so that you can deliberate  
11 together. Okay?

12 Evidence can be direct or circumstantial. Direct evidence  
13 is direct proof of a fact such as a testimony by a witness  
14 about what that person, that witness personally saw or  
15 personally did. Circumstantial evidence is proof of one or  
16 more facts from which you could find another fact.

17 You should consider both kinds. The law makes no  
18 distinction between the weight to be given to circumstantial  
19 versus direct evidence. It is for to you decide how much  
20 weight to give it.

21 So let me give you an example. This is a little bit  
22 theoretical, right? If you wake up in the morning and you  
23 find that there is water -- or that there is -- the sidewalk  
24 is wet, you could find, by seeing the sidewalk wet, that it  
25 rained during the night. On the other hand, there could be

## JURY INSTRUCTIONS

1 other evidence, like a turned on garden hose that might  
2 provide a different explanation for the presence of water on  
3 the sidewalk. You should consider all the evidence before  
4 deciding that a fact has been proved by circumstantial  
5 evidence. You should consider all the evidence in light of  
6 reason, experience, and your common sense.

7 There are Rules of Evidence that control what can be  
8 received into evidence. And when a lawyer asks a question or  
9 offers an exhibit into evidence and the other lawyer objects,  
10 I'll have to rule on that. If I overrule the objection, the  
11 question can be answered, the exhibit received. If I sustain  
12 the objection, the question cannot be answered or the exhibit  
13 will not be received.

14 I won't explain the Rules of Evidence to you; otherwise,  
15 we'll be here for a semester, right? But if I sustain an  
16 objection, you have to ignore the question and not guess what  
17 the answer would be. So as part of this, you might have to  
18 decide which testimony to believe and which testimony not to  
19 believe. You can believe -- you have the right to believe  
20 everything a witness says or part of it or none of it.

21 So what do you consider?

22 One, the opportunity or ability of a witness to see, hear  
23 or know the things about which they are testifying to; two,  
24 the witness's memory; three, a witness's manner while  
25 testifying; four, the witness's interest in the outcome of the

## JURY INSTRUCTIONS

1 case, if any; five, that witness's bias or prejudice, if any;  
2 six, whether other evidence contradicts the witness's  
3 testimony; seven, the reasonableness of the testimony in light  
4 of all the evidence; and, finally, any other factor that bears  
5 on believability.

6 Sometimes a witness may say something that is not  
7 consistent with something else he or she said. Sometimes  
8 different witnesses will have different versions of what  
9 happened. People forget things. And they make mistakes about  
10 what they remember. Also, two people could see the exact same  
11 event but remember it differently. So before you consider  
12 these differences -- or you may consider those differences,  
13 but do not decide the testimony as untrue simply because it  
14 differs from other testimony.

15 However, if you decide that a witness has deliberately  
16 testified untruthfully about something important, you may  
17 consider and choose not to believe anything that witness says.  
18 On the other hand, if you think they testified truthfully  
19 about some things and untruthfully about the others, you can  
20 accept the part you think is true and just disregard the rest.

21 The weight of the evidence does not -- as to a fact does  
22 not necessarily depend on the number of witnesses who testify.  
23 What's important is how many -- how believable the witnesses  
24 were, and how much weight you think their witness -- their  
25 testimony deserves.

## JURY INSTRUCTIONS

1           Okay. You see my court reporter. She's transcribing but  
2           do not -- you will not have a trial transcript, so you have to  
3           pay close attention to the trial testimony. All right?

4           If you wish to take notes, you can. We've given you  
5           little stenograph notebooks. If you take notes, please keep  
6           them to yourself until you go into the jury room to  
7           deliberate. Do not let note taking distract you. When you  
8           leave each day, leave your notes in the jury room. No one  
9           will read your notes. Whether or not you take any notes, you  
10          should rely on your memory of the evidence. Notes are there  
11          to assist your memory, but you shouldn't be overly influenced  
12          by your notes or those of other jurors.

13          I do allow jurors to ask questions, not all judges do. In  
14          your binders tomorrow, you'll see a sheet. That sheet will  
15          have where you can write down questions and give them to Edwin  
16          at the break or at the end of testimony. Understand that if  
17          the Rules of Evidence do not permit a particular kind of  
18          question, it won't be asked. And I'll advise you of that.  
19          But I also always talk to the lawyers before any of your  
20          questions are asked. Okay?

21          So I'll have some more instructions for you later, but  
22          let's -- let's get started here. Each side is going to make  
23          an opening statement. An opening statement is not evidence.  
24          It's simply an outline to help you understand what that party  
25          expects the evidence will show.

## JURY INSTRUCTIONS

1 After that -- we'll get the openings today. Presentation  
2 of evidence will start tomorrow. Witnesses will take the  
3 stand, documents offered and admitted into evidence. Impinj  
4 will present its case first. The witnesses are then  
5 questioned by Impinj's counsel, that's direct examination.

6 After that's complete, NXP gets to cross-examine to prove  
7 infringement. Impinj will have to persuade you that it's more  
8 likely than not that NXP infringed.

9 After Impinj presents its case, NXP will call its  
10 witnesses who it will also examine and be subject to  
11 cross-examination. Same kind of process. NXP's going to  
12 claim that the patent's invalid. They need to persuade you  
13 that it's highly probably that those claims are invalid.

14 After that, Impinj will return and put on its evidence  
15 claiming that the patents are valid. So we'll go back and  
16 forth.

17 All right. At this point then -- or once all that's done,  
18 I'll give you final instructions. You'll get the final  
19 closing arguments by the lawyers and then you'll go decide the  
20 case.

21 So what we're going to do now is we're going to stand and  
22 stretch 'cause I know it's the afternoon, and Mr. Al-Salam is  
23 going to give you his opening.

24 Okay. So let's stand and stretch. He'll get ready.

25 Can we have the -- Mr. Al-Salam, do you have control of

1 the --

2 **MR. AL-SALAM:** Can it be published now?

3 **THE COURT:** And then once he finishes, we'll take a  
4 short break before we hear from the other side. Okay?

5 All right. Everyone can be seated.

6 Mr. Al-Salam --

7 **MR. AL-SALAM:** Thank you.

8 **THE COURT:** -- you may proceed.

9 **OPENING STATEMENT**

10 **MR. AL-SALAM:** And thank you again for the attention  
11 you've already given and that you will be giving in this case.  
12 This is an important case for everyone involved, but, in  
13 particular, my client, Impinj.

14 And my client, we've talked about big companies, but  
15 they're actually -- they just have one office. It's in  
16 Seattle. They have about 400 employees. And what I want to  
17 talk about on this opening statement is to give you an  
18 understanding of what the -- what the technology is they're  
19 arguing about, what the patents are, what you need to decide.  
20 So...

21 (Demonstrative published.)

22 **MR. AL-SALAM:** So this is the big picture. The  
23 technology relates to something called RAIN RFID. It's a  
24 specific type of radio frequency identification. And it's  
25 better than any radio frequency identification you may know

1 about. It's more interesting, it works better, and it has  
2 great, great possibilities to -- for the future to help people  
3 and businesses.

4 Impinj is a 400-person company, as I mentioned, in Seattle  
5 that has led the way in this industry. They have more patents  
6 than any company in the world has in this industry.

7 Now, NXP, they have a lot to be proud of. They're a lot  
8 bigger than Impinj. They have lots of patents themselves on  
9 lots of things. But in this industry, Impinj is the leader.  
10 And the only reason we're here is because when Impinj comes  
11 out with a new product, NXP copies those features and  
12 infringes those features, and we couldn't get it resolved  
13 without a lawsuit. That's why we're here.

14 Now, here's what I want to do today. I want to tell you  
15 the questions you have to answer. The judge has already  
16 talked about them. I want to talk about this technology. I  
17 want to talk about -- a little bit about the people you're  
18 going to meet. Because I can guarantee you this: There's not  
19 much I can promise, but when you get finished with this trial,  
20 you'll know a lot more about RFID than you ever knew. You'll  
21 have met some amazingly accomplished interesting people.  
22 You'll have learned about this little company in Seattle that  
23 is doing cutting-edge stuff in the industry. And you will  
24 know what a rectifier is. And you will be able to impress  
25 your family and friends about what you know about both RFID



1 and rectifiers.

2 I want to talk a little bit about the two patents at  
3 issue, and I want to talk about the evidence that we'll  
4 present.

5 (Demonstrative published.)

6 **MR. AL-SALAM:** So let's first start with -- we're  
7 going to talk about them in a different order. The judge  
8 mentioned the '597 patent first and then the '302 patent. The  
9 '302 patent issues are simpler, so we're going to start with  
10 the '302 patent. I'll explain what -- what that's about and  
11 the issues and then we'll do the '597. It also simpler  
12 because, as the judge told you, she's already decided that NXP  
13 infringes that patent, so you don't have to decide  
14 infringement.

15 What you're going to be asked is, has NXP proven by clear  
16 and convincing evidence that that patent is invalid. And  
17 we'll go through what their arguments are, but I'll tell you  
18 now what they're doing is they're relying on a combination of  
19 what some other people did and said, oh, well, it could have  
20 been obvious. That's what they're relying on to say it's  
21 invalid. And you have to decide is that clear and convincing  
22 evidence that it's obvious.

23 Then you have to decide whether we have proven that they  
24 willfully infringed. It's -- there's difference between just  
25 infringement, as the Court has found, and something called

1 willful infringement. And the judge will instruct you as to  
2 what willful infringement is. But that's the second thing  
3 you'll have to decide.

4 And, lastly, it -- you'll have to decide -- unless you  
5 find that they have proven that the patent is invalid, you'll  
6 to have decide damages. So that's on the '302 patent.

7 (Demonstrative published.)

8 **MR. AL-SALAM:** We sometimes call it the Enduro '302  
9 patent because it describes what the feature is. And I'll  
10 explain that to you.

11 Now, this is what we call the '597 patent or the Oliver  
12 '597 patent.

13 (Demonstrative published.)

14 **MR. AL-SALAM:** Once again, there's the issue of  
15 validity. Have they proven by clear and convincing  
16 evidence -- that's a higher standard as the judge mentioned --  
17 that this patent shouldn't have been issued, and have we  
18 proven that the patent is infringed?

19 And if you say no to the first and yes to the second, then  
20 you'll also decide whether the infringement has been willful  
21 and what damages should be awarded to Impinj.

22 Okay.

23 (Demonstrative published.)

24 **MR. AL-SALAM:** Let's go back and talk about the  
25 technology. RFID stands for radio frequency identification.

1 And it's -- you've probably seen it -- like I have a keycard  
2 somewhere. When I want to get in my building, I can just hold  
3 this up and the door sort of magically unlocks. And you can  
4 do it -- to get in a hotel room, you can use it.

5 What's amazing is there's no battery in here. What  
6 happens is there's a reader, what's called a reader that emits  
7 radio waves. It just emits radio waves. In this little thing  
8 there's a little -- there's a little IC and there's a  
9 little -- a little antenna. And it can take those radio waves  
10 and it can power a little circuit that then sends something  
11 back and says I should be let in or whatever that it's going  
12 to send. It has information on the tag that it can then emit  
13 back.

14 What's amazing about it is it can do it without a battery.  
15 It's what they call passive RFID. And the way it works -- we  
16 have a little image here -- this reader emits the waves,  
17 they're picked up by the antenna. And then the antenna, it  
18 powers it -- it goes through what's called a rectifier. And  
19 we're going to talk a lot about a rectifier. What a rectifier  
20 does is it can convert those waves that it's got coming in  
21 into power to power that circuit. It's -- you know, some  
22 people say it's almost like magic. It's just taking something  
23 out of air and getting power to power the integrated circuit,  
24 which we call IC, by the way. If I say "IC," I'm referring to  
25 the integrated circuit.

1 And it transmits it back to the reader.

2 (Demonstrative published.)

3 **MR. AL-SALAM:** This is how big these ICs are.

4 They're tiny. They have thousands, tens of thousands of  
5 electrical components on them when they're actually that  
6 small. I mean, this is an aside, but humankind has done a lot  
7 of stuff. We've gone to the moon. We've cured diseases.  
8 We've had done everything else. This has to be in the top 10,  
9 putting tens of thousands of little electrical components on  
10 something that small is truly amazing.

11 So -- but now let's talk about what -- what we're talking  
12 about.

13 (Demonstrative published.)

14 **MR. AL-SALAM:** So to be clear -- I just want to be  
15 clear. The parties, this is what they make. Both parties,  
16 Impinj and NXP, make these little integrate circuits. And  
17 they made them especially for this RAIN RFID that I'm going to  
18 talk about a little more.

19 But they won't work just like that because to -- to get  
20 those waves out of the air, they need an antenna. So this is  
21 what we call an RFID tag.

22 (Demonstrative published.)

23 **MR. AL-SALAM:** A tag means the IC and the antenna.

24 And this is what they look like. They're really small  
25 (indicating) but the IC is tiny. The antenna's a little

1 bigger because the antenna needs to -- to be able to receive  
2 the waves of -- of radio frequency and then send it to the  
3 rectifier where it's converted into power. And we're looking  
4 at the '597 patent title there. It says "RFID tags with  
5 synchronous power rectifier." So we'll talk about what that  
6 means, but that's what that patent relates to.

7 (Demonstrative published.)

8 **MR. AL-SALAM:** So then what is RAIN RFID? You know,  
9 I said this is a special type of RFID. And what it is, is you  
10 can have RFID at different frequencies. The frequency of the  
11 radio -- of RF waves or radio frequency waves coming in can be  
12 different. You can have low. You can have high. This is  
13 ultra-high frequency and it follows a specific protocol called  
14 the Gen2 protocol. And -- and so what it is, is these are  
15 ultra-high frequency RFID ICs or tags that follow the specific  
16 protocol called the Gen2 protocol. It works much better --  
17 it's sort of like Uber or super bar code scanning.

18 But you know why it's better than bar code scanning?

19 Nobody has to hand-scan anything. You can actually just  
20 roll a big -- a big pallet of materials through a fixed  
21 scanner. It can read them all. It -- nobody has to do  
22 anything. It can read stuff from a distance. Unlike --  
23 unlike my thing to get in my office, it doesn't -- I don't  
24 have -- you don't have to push it right up to it. It has  
25 great robustness. And that's why it can be used in all kinds

1 of ways.

2 For example -- these are just some examples.

3 (Demonstrative published.)

4 **MR. AL-SALAM:** They really are just examples. Newark  
5 airport uses them to track bags. In fact, if you fly Delta,  
6 Delta has a bag tracking system. And what it does is they put  
7 in -- in your baggage tag something that looks like this.

8 (Demonstrative published.)

9 **MR. AL-SALAM:** And they can then, with the readers,  
10 know exactly where your bag is at all times. So they can --  
11 it's connected -- it's connecting these types of products to  
12 the Internet.

13 (Demonstrative published.)

14 **MR. AL-SALAM:** Hospitals use them so that no one has  
15 to sign out when they take medicine or they take something  
16 else. They can just pull some medicine out and it knows it's  
17 gone and it will know where it goes. It tracks it because  
18 they each have one of these little tags in them.

19 (Demonstrative published.)

20 **MR. AL-SALAM:** Carvana uses them to track where cars  
21 are and when they come in and to identify -- and you've  
22 probably figured it out by now. It can stop counterfeits,  
23 right? Because if somebody -- like Walmart is the biggest  
24 users of these tags in the world. So if somebody takes a  
25 product from Walmart, takes it out, Walmart knows specifically

1 what the product is. Not just that it's jeans or a purse,  
2 they know the individual product. And when somebody wants to  
3 bring it back, they know whether it's a counterfeit or  
4 knockoff or not what they brought in because all they have to  
5 do is put it near the reader and the reader can say, yep,  
6 that's what we sold to that person.

7 These are just some examples. The L.A. marathon uses it  
8 to track runners. As the runners go through stations, they  
9 can keep track of every runner that's gone through. It is  
10 amazing technology.

11 UPS is using it. And here's a commercial where they talk  
12 about how they use this technology.

13 (Demonstrative published.)

14 **MR. AL-SALAM:** Whoops. Okay. There we go. See if  
15 we can play it.

16 We don't have sound.

17 (Video recording was played.)

18 **MR. AL-SALAM:** I feel like I should be telling you,  
19 but what they're talking about is -- is -- what their ability  
20 to do is to track --

21 (Pause in the proceedings.)

22 **MR. AL-SALAM:** Well, if we don't get it. It -- what  
23 they're doing is they have a new tracking system using my  
24 client's ICs that can follow where every single package is or  
25 is going and they can -- let's see if we can get it.

1 (Video recording was played.)

2 **MR. AL-SALAM:** So, again, these are just examples,  
3 but I wanted you to see some examples of what this technology  
4 can do.

5 And now let's go back to who Impinj is because Impinj has  
6 done more than anyone to push the technology. In fact, it's  
7 called RAIN.

8 Do you think it's a coincidence that Impinj is in Seattle?  
9 It's not.

10 This gentleman here is Chris Diorio. I'll talk a little  
11 bit more about him, but he's the one that coined the name  
12 RAIN. Impinj sold the very first of these RAIN RFID ICs and  
13 this technology requires both an IC and a reader. They are --  
14 Impinj is the leading seller of readers and reader chips.

15 Now, NXP is also a big seller of the RAIN RFID ICs and  
16 that's what this dispute's about. Both parties, Impinj and  
17 NXP, have about 50 percent, little less each, perhaps, of that  
18 market, of the RAIN RFID IC market -- just for ICs. Again,  
19 NXP doesn't sell readers; they just sell the ICs and the ICs  
20 are what's at issue in this case.

21 Dr. Diorio, we call him doctor -- you're going to hear  
22 about a lot of doctors because if you have a Ph.D. -- he's got  
23 one from Cal Tech -- they call them doctors. They're not  
24 medical doctors, but a Ph.D. is technically a doctor. So he  
25 played a key role in developing the Gen2 protocol. He's the



1 one that founded what's called the RAIN Alliance, and he'll be  
2 the first witness you see tomorrow.

3 (Demonstrative published.)

4 **MR. AL-SALAM:** As I mentioned, they have 300 patents  
5 directed to this RAIN RFID technology. This case only  
6 involves two, but they have 300. They have been the leader.

7 This was taken a few years ago.

8 (Demonstrative published.)

9 **MR. AL-SALAM:** They have more employees now. About  
10 400, I mentioned. But at the time, these were essentially all  
11 their employees on the roof of their building in Seattle.  
12 That's the Space Needle in the background.

13 You're going to meet Dr. Diorio tomorrow. What can I tell  
14 you about him? He's quite accomplished. He's named as an  
15 inventor on 175 patents. He -- as I mentioned, he has a Ph.D.  
16 from Cal Tech. He's won lots of industry awards. Just last  
17 year -- this year he won the Geekwire CEO of the Year award in  
18 the Northwest. He's been invited to the White House. He is  
19 an impressive person.

20 (Demonstrative published.)

21 **MR. AL-SALAM:** You're also going to hear from  
22 Ron Oliver. It's called a technical fellow. That is a title.  
23 It's not like he is a fellow and kind of technical. It's the  
24 highest in engineering you can get. And he's been there as  
25 long as Dr. Diorio has. For 20 years he's been working at

1 that company. And a lot of their employees have been there  
2 for that long. He's a named inventor on 88 patents.

3 And you're also going to meet Jeff Dossett, who's the  
4 chief revenue officer. He's not a patent guy, doesn't have a  
5 lot of patents, but he chose -- when he was trying to look for  
6 a place to land, a place that was up and coming, a place that  
7 was doing interesting things -- he chose Impinj. And you'll  
8 hear from him as well. So you'll meet all three of them.

9 (Demonstrative published.)

10 **MR. AL-SALAM:** Now you're also going to meet some  
11 independent experts. When I say "independent," there's no  
12 question that Dr. Diorio and Mr. Oliver are experts. They  
13 probably know more about this technology in this industry than  
14 anyone. But you'll meet some others.

15 You'll meet Dr. Greg Durgin, who's in the audience, and  
16 he's going to talk to you about the -- the issues of  
17 infringement on the '597 patent and validity on the '302 and  
18 '597. He's a very accomplished person you'll hear more about.

19 You'll see Dr. Thompson at the end. He is just going to  
20 discuss whether or not NXP has rebutted or has -- has found  
21 clear and convincing evidence that the '302 patent is invalid.  
22 Again, there's no infringement issue on that patent so we  
23 don't need to prove infringement on our case in chief, what  
24 they call our case in chief. That will just be for the  
25 rebuttal.

1 And you'll hear from Lauren Kindler. She is an economist  
2 who will talk about damages and what damages Impinj should  
3 receive for the infringement that's occurred.

4 (Demonstrative published.)

5 **MR. AL-SALAM:** Now, who's NXP?

6 We're not trying to say NXP is a terrible company or  
7 anything like that. They're going to talk to you all about  
8 their history, and they have a great history in  
9 semiconductors. They have 33,000 employees. They are in  
10 NFC -- called Near Field Communications. They have been  
11 making semiconductors for many, many years, and they -- and  
12 they do a great job at what they do.

13 This -- our dispute with them is only in this little field  
14 called RAIN RFID where they compete with us on the sale of ICs  
15 and where we believe, and at least have shown for one patent,  
16 they infringe our patents.

17 And we have something down on the bottom here. It says:  
18 The UCODE 8 must defend our UCODE 7 position and needs to  
19 target the Impinj R6. Let's start talking about the products  
20 that you're going to hear about because that's -- that's one  
21 of issues.

22 (Demonstrative published.)

23 **MR. AL-SALAM:** Our -- we have various ICs. They're  
24 called different things. We're going to focus a lot in this  
25 case on the launch of what's called the Monza R6 IC. That was

1 the first to have the '302 invention, one of first to have the  
2 '597 invention.

3 And the UCODE 8 is one of accused products.

4 NX- -- this, by the way, what I have on the bottom is from  
5 a NXP document. But when UCODE 8 was launched, we believe  
6 that it had incorporated lots of features from the Impinj  
7 Monza R6, including the patented features you're going to hear  
8 about today.

9 (Demonstrative published.)

10 **MR. AL-SALAM:** So here's the timeline. The '597  
11 patent issued way back in 2012. In March 2014, we introduced  
12 our Monza R6, a product that, as you will see, was cutting  
13 edge, revolutionary in this field. It was the best IC that  
14 had ever been made for a RAIN RFID IC.

15 Within one year, NXP paid tens of thousands of dollars to  
16 have it torn apart. They call them teardowns. They -- they  
17 take them apart, and they try to figure out how they work,  
18 what's in there.

19 A couple years later, they introduced the UCODE 8 product.  
20 The UCODE 8, as we'll see, had the same type of pads as are  
21 claimed -- or the same shaped pads as are claimed in the '302  
22 patent and the same rectifier that's claimed in the '597  
23 patent.

24 On October 6, 2017, Impinj, by a letter written by me,  
25 said, you know what, you're infringing our '302 patent. Will

1 you stop? They didn't stop. In fact, in 2021, they came out  
2 with new product, the UCODE 9. It has the same pads.

3 In February 14, 2019, after we had to do a teardown to  
4 figure out how their rectifier worked because Impinj isn't in  
5 the business of doing teardowns, they did -- we did a teardown  
6 just to figure out -- because they said, well, you've got to  
7 show us specifically how we're infringing. We did that, and  
8 we said, okay, we did the teardown. You're infringing. Will  
9 you stop? They haven't stopped.

10 We spent two years trying to talk to them in -- in  
11 correspondence, trying to avoid having to file suit. Impinj  
12 is a small company, 400 people. They don't really have the  
13 time or money or desire to just pay lawyers like me and my  
14 colleagues. They have better things to do. But they had to  
15 file suit because they couldn't get it resolved.

16 (Demonstrative published.)

17 **MR. AL-SALAM:** So now, let's talk about the specific  
18 patents. It's time to get to the patents. As I said, the  
19 '302 is relatively straightforward. What you have is it's --  
20 when you have to -- what you got, these ICs, I told you, you  
21 have to attach them to an antenna like here. They're tiny  
22 little things. How do they attach them? They glue them. I  
23 know it sounds crazy, but that's what they really do. They  
24 glue them to the antenna, and what -- to make that work, that  
25 process work better, Impinj invented this idea of having

1 larger pads on the -- on the IC itself. Because they used to  
2 have bumps, and I'm going to show you all that.

3 This patent doesn't relate just to big pads, but it  
4 relates to the way you shape the channel between the pads.  
5 But let's -- let's -- this was what they called the prior art.  
6 Now, the IC is at the top, and the antenna connection's on the  
7 bottom.

8 (Demonstrative published.)

9 **MR. AL-SALAM:** Obviously, the IC doesn't look like,  
10 you know, a square like that. This is just for illustration.  
11 But what the prior art was is they used -- in RAIN RFID ICs,  
12 they use these what they call bumps, and they use those bumps  
13 to connect the IC to the antenna. And -- and that's what had  
14 been used exclusively in the RAIN RFID field before Impinj  
15 launched the Monza R6. There's a problem though.

16 (Demonstrative published.)

17 **MR. AL-SALAM:** This what happens if -- if the glue --  
18 if you have those big pads and you put it down on glue, it's  
19 sort of the like hydroplaning, right? It's sort of can -- it  
20 can turn and get misaligned as you're trying to stick those IC  
21 on the pads.

22 So that was the problem, and so Impinj said, how about if  
23 we flair the channels to make the glue push out easier and  
24 better? And it worked. And you're going to hear from  
25 Mr. Oliver, among others, that it worked. If you do those

1 flared channels, it pushes the glue out better, and you get  
2 more reliable connections between the IC and the antenna  
3 contacts.

4 And that's what the patent says.

5 (Demonstrative published.)

6 **MR. AL-SALAM:** It says, "During attachment of the IC  
7 to an inlay or strap" -- and that's what the antenna contacts  
8 are on -- "the channel may facilitate the flow of liquid  
9 adhesive so as to reduce the turbulence and propagation  
10 velocity associated with the liquid adhesive, thereby reducing  
11 this alignment caused by the movement of the IC with respect  
12 to the inlay or strap."

13 So that's what this patent's about. And, again, you don't  
14 have to determine infringement; that's been determined. The  
15 only issue for you will be whether there was willful  
16 infringement, whether they have proven it's invalid, and then  
17 damages.

18 (Demonstrative published.)

19 **MR. AL-SALAM:** So when we came out with this  
20 invention on the Monza R6, we refer to -- we came out at the  
21 same time we came out with the big pads. It was big pads with  
22 the -- with the shaped channel, and we called that the Endura  
23 feature. And we -- we -- we promoted it. We said, listen,  
24 this is going to make all our customers' lives better.

25 You know what? I haven't talked about the customers. Who

1 do the -- who do these companies sell these ICs to? They sell  
2 them to companies that attach them to antennas. So neither  
3 NXP nor Impinj actually do the gluing to the antenna. They  
4 sell them to something called inlay manufacturers.

5 Avery Dennison, you might have heard of them. They're the  
6 biggest customer for both companies. They're the ones that  
7 actual glue the ICs to the antennas.

8 So we promoted this to the inlay manufacturers. And we  
9 advertised that this was patented. *It's a patented new*  
10 *high -- high performance attach technology to connect a Monza*  
11 *IC to an inlay. It replaces commonly used bumps with large*  
12 *metal -- flat metal pads that are lithographically defined and*  
13 *form the connection between the IC and the antenna.*

14 (Demonstrative published.)

15 **MR. AL-SALAM:** And this is more promotion when  
16 this -- the Monza R6 came out. And the Monza R6 was a very,  
17 very popular product. In fact, it won -- from one -- one  
18 award is the "Internet of Things Product of the Year."

19 And it said the Monza R6 tag chip from Impinj was named  
20 Internet of Things Product of Year in the Annual ACE Awards,  
21 and, in part, for the company's sustained efforts nurture the  
22 fledgling market for UHF RFID tags.

23 (Demonstrative published.)

24 **MR. AL-SALAM:** So what did NXP do? NXP said, okay,  
25 we're going to coming out with our UCODE 8. It's going to be



1 the next generation of their product. And they said, this is  
2 a document they have we need to target, the Monza R6. And as  
3 I told you, they did a teardown in March of 2015 where they  
4 paid a company to tear apart the Monza R6. They -- they said  
5 they did a full analysis by Science Vision of all the aspects  
6 of that -- of that IC. And then they said, what are customers  
7 telling us? What are our inlay customers telling us?

8 (Demonstrative published.)

9 **MR. AL-SALAM:** Well, here's the key requirements from  
10 the customers. And they said -- it says, "Easy to handle.  
11 Insensitive to production tolerances."

12 And then this is an NXP document. It says, "Impinj  
13 introduced, with their Endura technology, two big copper pads,  
14 a complete" -- means completely -- "new concept into the UHF  
15 market, which, based on feedback from the field, is helping  
16 with respect to handling, assembly tolerances and reliability.  
17 UCODE 8 project should deliver a competitive bump technology."

18 In their own documents, they say this was completely new  
19 in the field. And they're also saying, our customers are  
20 telling us we need to do this.

21 So what did they do? They came out with a very similar  
22 shaped big pads. So the Monza R6 is on the left. The  
23 UCODE 8's on the right. Now, they do have that channel that  
24 goes in between. That's -- that's not relevant for purposes  
25 of infringement of this patent. That's what they came out

1 with, and look at the difference between their earlier  
2 product.

3 (Demonstrative published.)

4 **MR. AL-SALAM:** The UCODE 7 is on the left. It has  
5 those four little bumps compared to the UCODE 8, which has a  
6 big pads with the flared channels.

7 And they promoted it. They said that, "The new chip's pad  
8 structure is designed to better accommodate the application of  
9 glue in order to ensure a better connection between the chip  
10 and the antenna, thereby allowing for a higher assembly speed  
11 and more reliable, robust label."

12 And they talk in the bottom about the shape of the pads.

13 (Demonstrative published.)

14 **MR. AL-SALAM:** So as I said, October 6, 2017, I wrote  
15 them, and this is a letter from me. There's a -- what we call  
16 a claim chart, which explains why they're infringing on the  
17 right. And we said, you're infringing, but they later came  
18 out with the UCODE 9 in 2021. It looks almost the exact same.

19 Here's one figure from the patent, Figure 13 on the left,  
20 the Monza R6 which looks very much like it, and the UCODE 9,  
21 which also looks very much like it.

22 (Demonstrative published.)

23 **MR. AL-SALAM:** And there's the timeline we talked  
24 about before.

25 We assert that this was willful infringement. They saw

1 our product. They knew it worked better. Their customers  
2 were asking. We called it patented. We wrote them a letter,  
3 and they still took that design. And they're still using it.

4 Now, they're going to say it's invalid. They're going to  
5 say, well, that was a mistake. The patent office shouldn't  
6 have granted that. That's why we get to use it. But, you  
7 know, let's put some things into context.

8 (Demonstrative published.)

9 **MR. AL-SALAM:** They're not saying it's ever been done  
10 before. They're not saying anybody ever did it before. What  
11 they're saying is, oh, some people did things like it. It  
12 would have been obvious. If it's so obvious, why didn't they  
13 come up with it? In this RAIN RFID field, they didn't. And  
14 their own document says it was a completely new concept.

15 And then they rely on this patent again by somebody else  
16 called Eberhardt. This is -- they have two combinations for  
17 obviousness.

18 There's two reasons why this doesn't work. One, it  
19 doesn't have flared channels. That's a picture of it. That's  
20 why they can't say it anticipates. They have to try to  
21 combine it with something else because it doesn't even have  
22 flared channels. But more importantly, it teaches away from  
23 the very technology that the '302 patent's directed to, which  
24 is called flip chip technology. They take that IC, and they  
25 flip it over and they glue it. That's why they call it flip

1 chip.

2 And I'm not going to read all of this, but you'll see that  
3 what this patent says is we've got a better solution than flip  
4 chip. We can print it, and it's better off. And therefore,  
5 you shouldn't even worry about flip chip. And -- ours is  
6 cheaper, so that's -- so this -- they cannot prove that this  
7 patent is invalid based on this obviousness combination of a  
8 patent that doesn't even have flared channels. And it teaches  
9 away from flip chip technology to begin with.

10 So for all those reasons, we ask that you find there was  
11 willful infringement and grant damages to Impinj.

12 Now, we're going to get to the rectifier patents. I said  
13 you'd learn about rectifiers -- and I know I'm going a long  
14 time here, but this one is more complicated than just shapes.  
15 But let's talk about what a rectifier does.

16 I already mentioned it. It takes -- it takes radio  
17 frequency waves that it's receiving through the antenna, and  
18 it converts them into direct current to power the circuit.  
19 It's sort of amazing.

20 The way -- here's the way you could look at. It's like a  
21 dim light is coming in, just a dim little flashlight. And by  
22 just collecting -- collecting all those waves coming in,  
23 storing them on little batteries called capacitors, I can keep  
24 upping the amount of light until I can produce a spotlight.  
25 That it's -- that's sort of what it's doing.

(Demonstrative published.)

**MR. AL-SALAM:** And the -- the -- so it talks about harvesting sufficient power from the RF wave can be difficult. This is the problem, since usually the RF signal is about 200 millivolts, and we need to get this up to 1 volt. So it means they have to make it five times stronger.

Now, we didn't invent rectifiers. Rectifiers have been around. There's no question about that, but this is what the invention is. There -- there was -- rectifiers were known to be either single path or double path, but the earlier single path rectifiers didn't use the RF signals themselves to open the transistors. And I'm going to explain this more, but this is the way I think about it.

(Demonstrative published.)

**MR. AL-SALAM:** When you're trying to create this charge that's building and building, and it's building as it's going, you have to use transistors to keep it from falling back. You open a gate. It's like a door. This -- this charge goes through, and you got to shut it right away or else it will leak back out. So a lot of the invention relates to the timing of these doors that are opening, the transistors. Opening and closing, opening and closing.

And what's called synchronous means they're actually using the RF signals that are coming in to help open and close those gates because if you do that, they're in time. These -- these

1 antennas have two -- two poles. So it's like one's up, and  
2 one's down. And you're -- and you're going like this  
3 (indicating), and you're pumping those transistors at the same  
4 time you're adding charge.

5 And that's -- that's how they do it. So let me give  
6 you -- show you -- and nobody had put together a single path  
7 rectifier with -- using the synchronous RF signals.

8 (Demonstrative published.)

9 **MR. AL-SALAM:** Here's an example of the two types of  
10 prior art. The one on the left is right from the patent.  
11 It's called a -- it's single path. But as you see, what's  
12 happening there is that RF is coming in the bottom, and in  
13 that -- those two lines are capacitor. It can charge that --  
14 that capacitor with some -- it's like a little battery. But  
15 then on the top, it says, "DC bias." Those are transistors,  
16 the doors, but they're not using the RF signal. They're using  
17 just a direct current, what they call bias, to open and close  
18 those gates.

19 It worked. There were some advantages. But -- and then  
20 on the -- on the right-hand side, notice that RF didn't say  
21 plus or minus. It just says RF because the one signal coming  
22 in there was just going up and down, up and down into that  
23 capacitor.

24 Now, on the right, we have RF plus on the bottom, RF minus  
25 on the left, on the top. But this is creating what they call

1 dual path, and what you got to think of it is sort of -- the  
2 way I think about it is at some point, the RF plus is pulling  
3 the -- the charge down. And then the RF minus is pushing the  
4 charge through. And they have to close the gates behind them  
5 and things like that. But it results in two paths, one on the  
6 top, one on the bottom, and so it's called dual path.

7 Now, keep in mind the transistors are the same size for  
8 bottom and the top. The paths are the same, and they're both  
9 accumulating charge as they go because this is just one stage,  
10 we call it, of -- of this rectifier. And it's going to be  
11 accumulating charge as it goes.

12 (Demonstrative published.)

13 **MR. AL-SALAM:** Here's showing -- the old single path  
14 goes -- you're heading down, and you see the little -- all the  
15 pluses on the far right? It says plus, plus, plus 3 and then  
16 the -- then the 5. That's because it's accumulating charge as  
17 it goes.

18 (Demonstrative published.)

19 **MR. AL-SALAM:** And here's the double path. Again,  
20 it's -- it's accumulating charge as it goes, but it is using  
21 the RF signal synchronously in time, out of phase, but in  
22 time, to sort of the pump -- pump that charge down -- going  
23 downstream across those two paths.

24 (Demonstrative published.)

25 **MR. AL-SALAM:** Here's the invention. The solution

1 that Mr. Oliver and his two other inventors came up with was,  
2 we're going to make it so it's going to be a single path, but  
3 we're going to have it synchronous. The RF minus, RF plus are  
4 going to be timed. And it turns out if you do that, you can  
5 open and close those gates or doors much more strongly and  
6 quickly than you could otherwise. And it makes it a better  
7 rectifier.

8 (Demonstrative published.)

9 **MR. AL-SALAM:** So here's -- it says, "The synchronous  
10 element has RF coupled to Gates G1 and G2."

11 So G1 and G2, if you can see them on the far left, those  
12 are what operates the transistors. It's what opens and closes  
13 the doors. So they're using the RF, and they say, to  
14 "Increase the overdrive when the transistor should be on, and  
15 decrease it when it should be off. This improves the power  
16 conversion efficiency."

17 That's just a way of saying if we use those RF signals, we  
18 can open and close those easier and better than the way it was  
19 done before.

20 (Demonstrative published.)

21 **MR. AL-SALAM:** The claim is long. You have the claim  
22 in your -- in your binders. But let me just try to map it to  
23 you.

24 It says, "A first antenna input node" and "a second  
25 antenna input node." And that's what's shown. These are all



1 figures from the patent. So you have the antennas bringing in  
2 RF signals on both. You have a plurality of coupled stages.  
3 Plurality is just a fancy thing patent lawyers say to have --  
4 to mean more than one. So you have more than one stage.

5 And then each stage is what's below. And it says, in each  
6 stage -- because it says at least one of stages -- you have a  
7 first synchronous element with a beginning and an ending.  
8 That's that.

9 (Demonstrative published.)

10 **MR. AL-SALAM:** Then you have a first transistor.  
11 That's those things that open and shut the doors.

12 (Demonstrative published.)

13 **MR. AL-SALAM:** You have a second transistor, and you  
14 have an intermediate node, which is what's in between A and 1.  
15 But what's happening here is the charge is going down this  
16 path (indicating), and as soon as it gets by that first  
17 transistor or it's being pulled through, that's going to  
18 close. The other one's going to open, let it through, close.  
19 And they're all working in synch to pump this charge as it  
20 goes down this path.

21 So first accumulating -- charge-accumulating path, that's  
22 important. And no other charge-accumulating path. And this  
23 is where they're going to say, oh, well, we have another  
24 charge-accumulating path. And we dispute that.

25 You'll see what they are talking about is something called

1 bias circuitry. And then it says a second synchronous  
2 element -- and we don't have to go through this. It's the  
3 same thing. It just means that in each stage, you have two of  
4 these synchronous elements, meaning you have RF minus and RF  
5 plus at each one and that you are pumping that charge down one  
6 path.

7 (Demonstrative published.)

8 **MR. AL-SALAM:** That's the claim. That's the way it  
9 works. I know it seems complicated now, but you're going to  
10 know -- you're going to understand this by the time this  
11 trial's done.

12 Now, I told you they did a -- a teardown of our Monza R6,  
13 so they had this circuit. They knew about it as of 2015. And  
14 that -- sure enough, they come out with -- now, they --  
15 they'll say, oh, there's one main path. But then there's a  
16 second leakage path.

17 We dispute whether that second leakage path is a  
18 charge-accumulating path. And what you're going to find out  
19 is, whether it's what they call leakage or bias, it doesn't  
20 have the same size transistors. It has little transistors  
21 because what it is -- when you're talking about bias  
22 circuitry, it's like a helper. It's a little helper. It  
23 like -- it reminds me of the -- the choke on a car. And  
24 nobody has them anymore, so you probably don't even know what  
25 I'm talking about.

1 But it's -- it's like you prime it to get it ready to go,  
2 and then the RF wave comes in and opens or closes it. But it  
3 gets it warmed up. It gets it to where you're about to use  
4 it. That's what bias circuitry is.

5 (Demonstrative published.)

6 **MR. AL-SALAM:** And we have mapped this claim to their  
7 product in the same way as -- that we mapped it to ours.  
8 There's just one charge accumulating path. There's this stuff  
9 on the bottom that's going to be what I call the bias  
10 circuitry.

11 (Demonstrative published.)

12 **MR. AL-SALAM:** It's going to be opening -- it's going  
13 to be opening or helping open the -- those transistors. But  
14 it's not a second -- it's not accumulating charge. And, in  
15 fact, the patent says you can have predetermined voltages  
16 applied to those gates. That's the same thing as this bias  
17 stuff.

18 (Demonstrative published.)

19 **MR. AL-SALAM:** We told them they're infringing on  
20 February 14th, 2019. They haven't stopped, and the UCODE 9 is  
21 exactly like the UCODE 8. This is one of their witnesses.

22 (Demonstrative published.)

23 **MR. AL-SALAM:** Now, they're going to say this Mandal  
24 reference is -- this is their -- this is their invalidity  
25 argument. They're going to say, well, this invalidates it, or

1 we're doing the same thing as Mandal. But Mandal -- it's not  
2 the exact same patent, but it's the exact same disclosure  
3 that's in relevance was already considered by the patent  
4 examiner. So they're having to rely on prior art that was  
5 considered by the patent examiner. And the Mandal reference  
6 really is just the dual path approach. And -- and we'll be  
7 able to show that.

8 (Demonstrative published.)

9 **MR. AL-SALAM:** It's -- notice on -- their two  
10 paths -- it's just like what I said before, because that was  
11 Mandal -- the transistors are the same size, top and bottom.  
12 It's not like this is just bias circuitry on the bottom with  
13 little transistors. So that's it on the two patents for  
14 damages.

15 I'm not going to spend a lot of time on this. But it's  
16 lost profits or reasonable royalty. That's what you end up  
17 having to award. If we can prove lost profits because we  
18 would have made these sales, at least of some of our sales,  
19 but for their infringement, we're entitled to lost profits.

20 Otherwise, the minimum that we get is a reasonable  
21 royalty. We're going to show that they made additional sales  
22 and we lost market share because of this infringement. Now,  
23 they're going to say, oh, there's other stuff. You guys had  
24 other problems. And we might have had other problems. We did  
25 have other problems, but this infringement took market share

1 from us, maybe not 100 percent. I think we're asking for  
2 57 percent. But it took market share from us.

3 And we're only seeking a -- a percentage of the overall  
4 sales. I said that our market shares are about equal, but  
5 most of those sales that they're making are outside the U.S.  
6 by foreign affiliates. So when you see the numbers, you might  
7 say, wow, for -- for how much I thought this market was, it's  
8 not that much because we're seeking a total of \$18.9 million.  
9 And that includes a part that they will say are foreign sales.

10 And -- but you can make that decision.

11 (Demonstrative published.)

12 **MR. AL-SALAM:** And -- so that's it. I hope I taught  
13 you something. Thanks again. And we'll -- I'll see you  
14 tomorrow when we put on Dr. Diorio.

15 **THE COURT:** Okay. Why don't we go ahead and just  
16 take a 15-minute break? Then you'll hear from the other side.  
17 So it's 1:50. We'll have you come back in about 15 minutes  
18 just to stretch, go to the bathroom, freshen up. All right.

19 Edwin.

20 **THE CLERK:** All rise for the jury.

21 (The following proceedings were heard out of the presence  
22 of the jury:)

23 **THE COURT:** Okay. 1:52, we'll stand in recess for  
24 15 minutes.

(Recess taken at 1:52 P.M.; proceedings resumed at 2:07 P.M.)

(The following proceedings were heard in the presence of the jury:)

**THE COURT:** Okay. You may all be seated. The record will reflect the jury is back with us, and we are back in session.

The defense opening.

**OPENING STATEMENT**

(Demonstrative published.)

**THE COURT:** You may proceed.

**MR. HENDERSHOT:** Thank you, Your Honor.

Hi. I introduced myself earlier. My name is Mike Hendershot. I'm representing NXP. I want to take some of my time to make sure I do this. I want to thank you, again, for your service and attention and time in the matter. I really believe that the system we have in the United States to resolve parties' disputes is the best. There are a lot of them out there, but it's the best because people like you take time, pay attention, and look at the evidence, get the full picture, hear from both parties before they're allowed to make a decision.

And you make that decision based on the evidence, guided by instructions from the Judge as to how to apply the law. You don't get to decide it after the gentleman from Impinj

1 finishes speaking. You don't get to decide it after I'm  
2 finished speaking. What we say is not evidence. You need to  
3 look at the evidence, and I tell you that's a great system.  
4 So I thank you for that, and it is a privilege to stand, every  
5 time I get to do it, up in front of jurors and talk to you.  
6 So thank you.

7 It's also a privilege to stand here for NXP. NXP is one  
8 of world's greatest innovators. They're a worldwide company  
9 based mainly in the Netherlands and in the United States. And  
10 the Netherlands is a country in Europe known for windmills and  
11 tulips, which is why you have them in the picture here and  
12 you'll see some references to that throughout the case.

13 (Demonstrative published.)

14 **MR. HENDERSHOT:** NXP is represented here by  
15 Ralf Kodritsch. He's the global leader of the RAIN RFID  
16 business. He lives and works in Austria, but he'll be here  
17 for us -- with us for trial, along with some others.

18 So who is NXP?

19 (Demonstrative published.)

20 **MR. HENDERSHOT:** It's a worldwide leader in  
21 semiconductor chips. It got its roots in two of the great  
22 innovative companies in the world, Motorola in the United  
23 States and Philips in Europe. Those both -- both those  
24 companies have been around the world innovating in many ways  
25 that have touched our lives.

(Demonstrative published.)

**MR. HENDERSHOT:** Now, I talked about tulips and windmills, but NXP is still very much a U.S. company as well. Are they successful? Absolutely. And they're proud of it. They employ workers across the United States, including 500 here in the Bay Area, roughly, just off 237 down in San Jose.

(Demonstrative published.)

**MR. HENDERSHOT:** Now, you'll hear in this case some evidence and testimony about NXP and its predecessors and its history. I'm going to give you a little preview here of some highlights.

Motorola Semiconductor was founded in 1949 in Arizona. Philips Semiconductor was founded in 1955. That is very early in the semiconductor industry. NXP has decades of expertise and experience in designing and optimizing these little ICs. The gentleman for Impinj said that's one of top 10 accomplishments in the world, putting these little transistors on these chips. That's been driven by NXP historically and companies like them.

In 1969, the first words relayed to the Earth from the moon were relayed using Motorola radio technology. In 1993, getting into RFID, you'll hear from a gentleman named Franz Amtmann. He developed a technology called MIFARE. It's used in I.D. badges but also to pay fares on public transit. If you use a Clipper Card in the Bay Area to get around,



1 that's technology Franz Amtmann invented in 1993.

2 He also developed something called near-field  
3 communications or NFC. If you've used your phone to pay for  
4 something in a contactless way, checking out, that's using  
5 technology that Mr. Amtmann developed.

6 You see him in the little picture to the right there in  
7 2015, winning the European Inventor of the Year Award for his  
8 contributions to that mobile pay, contactless payment. He's  
9 an impressive guy, and you're going to get to meet him. I've  
10 met him. I think you'll enjoy his testimony.

11 And he's going to be testifying here, not because of what  
12 NXP's done in the past, which is great. He's the system  
13 architect for these UCODE products that you'll hear about here  
14 that they've accused of infringement. He's responsible for  
15 their design and implementation. And he's going to come here  
16 and explain that and answer some of these accusations you've  
17 heard.

18 (Demonstrative published.)

19 **MR. HENDERSHOT:** And NXP does have a great history,  
20 but they didn't stop innovating in the 50's. They didn't in  
21 the '60's; and they didn't in the 2010's.

22 In 2018, NXP was recognized as one of top global  
23 innovators in the world, and they got that award again just  
24 this year. They're still an innovative company, building on  
25 this proud history. Now, NXP is a company, as you might

1 guess, that is built in many respects on IP. It has tons of  
2 patents and halls of patents in some of its buildings. It's  
3 really impressive to see.

4 But because of that, they respect intellectual property.  
5 They don't willfully go out and try to infringe people's  
6 patents, and you're going to hear evidence about that.

7 (Demonstrative published.)

8 **MR. HENDERSHOT:** So who are you going to hear from  
9 here?

10 NXP is not just products and places. You're going to hear  
11 Ralf Kodritsch, who you've met a couple of times. He stood  
12 up. He's the -- he's a senior director and global leader of  
13 RAIN RFID business. He's been at NXP for 16 years.

14 You're going to hear from Christian Zenz who's a  
15 technology manager responsible for these pads, for the shape  
16 patent that you've heard about. He's going to come here from  
17 Austria and testify about how NXP designed those. He has been  
18 at NXP for 23 years.

19 Sy Rajen is the next one listed there. He's going to come  
20 up from Austin, Texas. He's a senior VP in finance who's  
21 going to come here and talk to you about some of the work at  
22 NXP and their sales and how they're structured. He's first  
23 joined NXP 15 years ago. He's also a director of the NXP  
24 charitable foundation, which is a nonprofit that is designed  
25 to foster representation and female leadership in STEM --

1 which is science, technology, engineering and mathematics --  
2 and promoting educational initiatives in that space.

3 Franz Amtmann, I just told you about, system architect for  
4 these, came up with the technology underlying your Clipper  
5 card that's used in the Bay Area and 750 other cities, NFC,  
6 which is the mobile payment, and is the system architect for  
7 these products. He's been at NXP for 30-plus years. He's  
8 been designing RFID tags for 30 years. Long before Impinj  
9 existed, Franz Amtmann was working on this technology.

10 We also have some experts you'll hear from. Dr. Dan  
11 van der Weide is in the gallery today. He just waved to you.  
12 He's a professor at the University of Wisconsin. He's one of  
13 those Ph.D.s that you heard referenced. He's an expert in  
14 electrical engineering and RFID technologies, and he's going  
15 to talk to you about these rectifier issues.

16 There's also Dr. Vivek Subramanian, who's also in the  
17 gallery. He's trimmed his beard since the photo. He teaches  
18 just up the road at Berkeley. He's another one of those  
19 Ph.D.s you've heard about. He focuses on RFID, electrical  
20 engineering, and also fluid dynamics. You heard them talk  
21 about how fluid would flow with these pads and they would  
22 hydroplane, he researches that. He's going to talk to you  
23 about these pad patents -- the pad patent.

24 And, lastly, David Haas. He's a highly trained economist.  
25 He will be here to talk to you about some of the financials

1 and damages issues you'll see in the case. And David is right  
2 in the audience as well.

3 So RFID, you get power from radio waves over the air  
4 without a battery. Honestly, when I first learned about it in  
5 this case, I said to my wife, it's kind of like magic, it's  
6 really neat. They get power without a battery from something  
7 over the air. I don't want to disappoint you. I think they  
8 noted this in their opening, this case is not about that  
9 magic. That magic was invented long before these patents,  
10 solved by people in passive RFID tags, like Franz Amtmann, who  
11 you'll hear from.

12 We talked about MIFARE, in 1993, that was a passive RFID  
13 chip that had to gather power from the air using a rectifier.  
14 We talked about NFC, another NXP product; HSL; HITAG, you'll  
15 hear about, from 2010. HITAG is a passive RFID product that  
16 NXP marketed, published about, and sold starting in 2010 and  
17 to this day. And it is used in some badges, but it's also  
18 used to track animals. It's pretty cool technology. That,  
19 again, passive RFID that gets power from the air.

20 I want to jump ahead to 2013 and UCODE 7. Counsel for the  
21 other side talked about UCODE 8 and UCODE 9. I want to talk  
22 about UCODE 7. It was a groundbreaking chip, the first truly  
23 global UHF RAIN RFID tag that could be used across any  
24 spectrum, any radio spectrum anywhere around the world. It  
25 was the first one in the industry that did that. Impinj

1 hadn't done it. NXP had the first truly global chip. Best  
2 performing chip in the world when it was released.

3 UCODE 8 continued the NXP design. When it was released --  
4 best performing chip in the world when it was released.  
5 Better than what Impinj had on the market.

6 And UCODE 9 was released in 2019. It's a streamlined  
7 version, kind of a condensed version of UCODE 8. No better  
8 performing chip in the world when that was released.

9 And now I've talked about the performance of these chips.  
10 That's not me bragging. That's not NXP bragging. You're  
11 going to see evidence in terms of Impinj documents. And this  
12 is an internal strategy document from the company.

13 (Demonstrative published.)

14 **MR. HENDERSHOT:** And I want you to look at the  
15 evidence, look at the documents, and understand it because if  
16 you do, I think you're going to get to the right result here.

17 Now, this document tells a story. This is the  
18 sensitivity, which is a way to measure the performance of  
19 these chips of company's products over time.

20 NXP's products are in blue. Impinj's products are in  
21 orange. So I'm going to move over here -- Madam Court  
22 Reporter. Let me know if you can hear me.

23 Monza 5 is an Impinj product that they say was a product  
24 that used their rectifier invention. It embodied their  
25 rectifier invention. It performed at that level. And lower

1 on this chart is better in terms of performance.

2 (Demonstrative published.)

3 NXP released UCODE 7. Outperformed it. Best performing  
4 chip in the world at the time. They don't even contend that  
5 UCODE 7 uses their rectifier invention or their pad  
6 inventions. That is the best performing chip in the world  
7 that doesn't use their rectifier, that's beating a product  
8 they had that uses their rectifier invention.

9 So when they tell you all of the value in these products  
10 is about this rectifier, this tells a different story.

11 (Demonstrative published.)

12 **MR. HENDERSHOT:** Impinj released Monza R6. Good  
13 chip, good product. Better performance than the UCODE 7. It  
14 used, according to them, the same rectifier invention as the  
15 Monza 5. It's performing a lot better even though it's  
16 supposed to be using the same invention. So when they talk  
17 about how important this rectifier invention is to the  
18 performance of these tags, remember, it's got to be something  
19 else driving that performance there between Monza 6 and Monza  
20 5 other than the invention 'cause they're using the same one.

21 Now NXP releases UCODE 8. Best performing chip in the  
22 world in history at the time it was released. Better than the  
23 Monza R6. Now, they say NXP copied the Monza R6. It's really  
24 easy for a lawyer to stand up here and throw out an accusation  
25 about copying. I think he didn't get five sentences into his

1 opening before he said, NXP copies. There's an issue with  
2 that. An accusation isn't proof. An accusation isn't  
3 evidence. What the lawyers say isn't evidence, much as I  
4 would like it to be sometimes.

5 This tells the story of the performance of these chips.  
6 And I want to ask you -- I want to ask you, when they say NXP  
7 copied their technology, think about three questions.

8 Did NXP lack expertise and need to copy from somebody else  
9 to build a product?

10 Did NXP have their own designs at the time that they could  
11 work off, or did they need to start from scratch copying  
12 something else?

13 And third, did NXP make a better performing product than  
14 what it supposedly copied?

15 'Cause here's the thing about copying. If you copy off  
16 somebody on a test, you copy their answers, you're never,  
17 never -- I can guarantee you one thing, you're never going to  
18 score better than that person on that test. You'll have the  
19 same answers and the same performance.

20 They said UCODE 8 copied their Monza 6?

21 Well, we got a better score on the most important test for  
22 these chips, the sensitivity. If we copied them, we didn't  
23 match their results, we didn't get a carbon copy. We built a  
24 better chip. And I think when you see the evidence you'll see  
25 that's because NXP has different ideas and different designs

1 and didn't copy their answers to the test.

2 (Demonstrative published.)

3 **MR. HENDERSHOT:** So this is the '597 patent claim  
4 one. I'm not going to walk you through all the words, but  
5 these are the elements that they need to prove, each one of  
6 them, to prove infringement by NXP. Those will get presented  
7 and explained to you in this case, but they need to run the  
8 table. They can't miss out on any one of them. Every one has  
9 to be met to prove infringement.

10 And there are two that I do want to talk to you about  
11 'cause I think they're important. First is a  
12 charge-accumulating path and the second is a capacitor. As  
13 they said in their opening, and you'll see from the witnesses  
14 and the evidence, their invention in this was to have a single  
15 charge-accumulating path. The patent says, "no other  
16 charge-accumulating path" in this claim. None.

17 So if you see -- that's called a neglective limitation to  
18 patent lawyers. They need to prove the negative for that.  
19 They need to prove that there's not another path in the  
20 relevant space in these chips that accumulates charge. That's  
21 what they need to do. That's their burden, and I don't think  
22 they can meet it when you guys review the evidence. So that's  
23 charge-accumulating path.

24 Let's talk about capacitors. I hope you'll learn a little  
25 bit about capacitors in this case, too, in addition the



1 rectifiers 'cause they're important to it. So we talked about  
2 a charge-accumulating path. How does charge accumulate on  
3 these paths?

4 They're called capacitors. They're little circuit  
5 components that you can think of as little tiny, chargeable  
6 batteries. So current flows on -- charge flows through a  
7 circuit. It will build up on these capacitors and get stored,  
8 and then it can be passed on or used in the circuit later  
9 only. We've depicted them here with a couple things like --  
10 they look like plankton to me from Sponge Bob, 'cause my  
11 daughter was a big Sponge Bob fan, but it's a representation.

12 I want to show you the symbol on the right. I want you to  
13 look at these schematics. I want you to look at these  
14 drawings. Look for that symbol with the "T" and the  
15 upside-down "I" above it. When engineers design these  
16 circuits, that's how they draw a capacitor. You'll be able to  
17 spot it. And if you see a capacitor on one of these paths,  
18 you'll know it's accumulating charge. It's their purpose in  
19 life, these little guys.

20 So what you need to do is look for a path and then look  
21 for those capacitors. And I want you to because I think when  
22 you see it, you'll see pretty clearly that we have multiple  
23 charge accumulating paths.

24 So let's talk about the '597 invention briefly. You saw  
25 the figure on the right earlier, which is a single

1 charge-accumulating path.

2 (Demonstrative published.)

3 **MR. HENDERSHOT:** It's got that in blue. It has  
4 capacitors connected that will accumulate charge. I want to  
5 talk about how they got to that.

6 The left-hand side is something -- they put in what's  
7 called an invention disclosure statement. Their inventors  
8 wrote to the company and said, hey, here's the invention I  
9 came up with for the '597, and they put in a bunch of  
10 different options and then it ultimately got filed with the  
11 patent office.

12 The one on the left was something they said, look, this is  
13 a two-path design, we don't want to do that. That's not us.  
14 That's known in the art. We talked about the Mandal reference  
15 earlier. You heard about that. I'll talk about it little  
16 more. They're saying we don't want the two-path design.

17 And why is that two paths?

18 There's a top path and a bottom path and you see  
19 highlighted in yellow those capacitors. Those are what I want  
20 you to look for in these documents. Those capacitors are what  
21 accumulate charge. So you have a top path and a bottom path  
22 accumulating charge. Impinj said that's the prior art, that's  
23 not us.

24 So how did they get to a single path?

25 (Demonstrative published.)

1           **MR. HENDERSHOT:** The right-hand side is the same  
2 invention disclosure document they said. They took the same  
3 known two-path rectifier with the yellow capacitors we saw  
4 earlier and just put a box over the bottom path. They  
5 literally just took what was known and deleted the second  
6 path. That's how they got to in their invention disclosure  
7 the single-path rectifier.

8           Now they made some tweaks along the way to some sequencing  
9 in some things, but that's how they got from two paths to one  
10 path. They took what was known and just said let's just wipe  
11 out all the transistors and the capacitors on the bottom.  
12 That makes sense when you see the claims and they say there  
13 can be no other, no other charge-accumulating path. They  
14 blocked them all out. So that led to this bit in the patent  
15 here.

16                               (Demonstrative published.)

17           **MR. HENDERSHOT:** And the way I think about it, to use  
18 an analogy, is I talked about having a cassette player, old  
19 audio cassette player in my car earlier, during voir dire. I  
20 also had an AM/FM radio. AM/FM are two different bands on the  
21 radio. If I take that radio out of my car and I say, you know  
22 what, this has AM and FM. It's got these two bands. I'm just  
23 going to rip out the AM band.

24           If I do that to a known radio, have I invented a  
25 single-band FM radio?

1 I have my thoughts on that. You'll have to decide it.  
2 But what I can't do under the law, and the Court will instruct  
3 you on this, is I can't take out one of bands, go to the  
4 patent office and say, hey, I came up with this one-band radio  
5 that's just a one-band FM radio, get a patent on it, and then  
6 come back years later and go after someone who's got an AM/FM  
7 radio and say my patent covers both. I know I took one out.  
8 I know I said it's just one, but really it covers two. And  
9 when you see the documents and you see the evidence -- some of  
10 which I'll walk through -- I think you're going to see that's  
11 exactly what they're doing with these paths.

12 (Demonstrative published.)

13 **MR. HENDERSHOT:** So we've talked lots about circuitry  
14 and everything you're going to learn: Capacitors, rectifiers,  
15 and the other patent's about shapes, a little less electrical.  
16 At the end of day, you're going to be asked a pretty  
17 straightforward question that you need to resolve.

18 Is there another path in NXP's products, one of these  
19 lines, and does it have a capacitor on it?

20 If it does, that's a charge-accumulating path 'cause  
21 that's why those capacitors exist, and we can't infringe. The  
22 patent doesn't say, no other big paths or no other little  
23 paths. There's nothing in the claim you'll see about size like  
24 he's talking about.

25 Is there a second path and does it have a capacitor on it?

1 That's why I took the time to talk about capacitors and  
2 show you the image 'cause I want you to look for those.  
3 'Cause if you've looked at that evidence carefully, you're  
4 going to see multiple paths in our product and that means NXP  
5 can't infringe. And this is from the Mandal reference here  
6 that was discussed, top path, blue; bottom path, red. Both  
7 have capacitors. No dispute. That is a stage of a two-path  
8 rectifier. That does not fall within their patent.

9 Now, that's important because you saw some pieces of  
10 diagrams earlier. I'm going to show you why this ties in.

11 (Demonstrative published.)

12 **MR. HENDERSHOT:** That's the Mandal piece of prior art  
13 in the upper left. We just talked about top path, bottom path  
14 and, again, look for those capacitors in yellow, look at the  
15 evidence. Two-path rectifier.

16 The UCODE 7 product I talked about earlier, that first  
17 universal chip, upper right. That's one stage of that  
18 rectifier. It intentionally has a top path and a bottom path  
19 in blue and red. Both of them have capacitors in yellow that  
20 accumulate charge. They don't contend that infringes. They  
21 don't say that product infringes.

22 What did NXP do in UCODE 8?

23 They stayed with their two-path designs. Now, these  
24 drawings are straight out of the circuit schematics for these  
25 chips, for these products. You'll be able to see these.

1 UCODE 8, top path, blue; bottom path, red. Both have  
2 capacitors, one on top, one on the bottom. They both  
3 accumulate charge. Same design in the UCODE 9, the later  
4 chip.

5 Now, is the bottom path in UCODE 8 smaller?

6 Sure. A lot of things got smaller in these chips as they  
7 needed to shrink components and the chips needed to get  
8 smaller.

9 I will tell you designers on both sides of this case will  
10 tell you there is cost pressure. These are tiny chips.  
11 There's real estate pressure on those tiny chips. If you can  
12 get rid of something or make it smaller, you do it. You do it  
13 in your design. The one thing NXP has never gotten rid of is  
14 that second path, and it won't. It has a two-path rectifier  
15 design. It's stuck with it and that doesn't infringe.

16 (Demonstrative published.)

17 **MR. HENDERSHOT:** So here, I want you to look at the  
18 evidence in this case. I absolutely want you to. This is a  
19 schematic of an NXP rectifier. Each of those boxes are what  
20 are called stages. There are multiple stages. They have a  
21 defined input on the left and output on the right. Charge  
22 comes in, it gets pumped up on those two paths, and comes out  
23 on the right at a higher level. Same to the next, same to the  
24 next, same to the next, until the last one outputs power to  
25 power the chip. That is NXP's UCODE 8 rectifier on that

1 drawing there.

2 Now, if you look inside one of those stages, this  
3 schematic is what I just showed you earlier. You'll see in  
4 the documents reference to those stage boxes. They'll say go  
5 see this diagram to see what's in inside here. This is what's  
6 inside there.

7 Top path in blue, bottom path in red, yellow capacitor,  
8 top and bottom. That's two charge accumulating paths and  
9 you're going to find that in each stage. They're there  
10 intentionally. That's how these products are designed to  
11 operate. They're two-path rectifiers.

12 (Demonstrative published.)

13 **MR. HENDERSHOT:** Now, this is three of those stages.  
14 And what you -- and they're more than that, but this is what's  
15 inside three of those stages showing you how they operate  
16 together. You have a top accumulating path in blue in each  
17 with a yellow capacitor and a bottom accumulating path in red  
18 with a capacitor in yellow. One to the next to the next  
19 passing it on. Each of those is a stage, and you can see  
20 those in NXP's drawings and documents.

21 So there are two paths here in each one of these stages.  
22 You can see it -- you'll see it in the documents. Go check my  
23 work. Each one has capacitors in yellow, and I don't think  
24 anybody's going to tell you a capacitor doesn't accumulate  
25 charge in this case.

1 So what does NXP do, or what does Impinj do?

2 They can't make those paths go away. That's the circuit.  
3 They can't make those capacitors go away. Those are where the  
4 charge accumulates. Those are there.

5 So what do they do?

6 They do two big things. First thing they do, they say,  
7 well, if you take the schematic and kind of hold it at an  
8 angle and squint and pick a starting point in one stage and  
9 some random other endpoint, like two or three stages down, and  
10 if you say that's a stage, if you just squint and look at  
11 that, that's a charge-accumulating path and there's no other  
12 path between those two points we've chosen. Well, that  
13 doesn't work because those aren't the stages. You just saw  
14 the stages. It's plain as day. That's the stage. That's  
15 what inside it. So pay close attention with they're saying  
16 this is a stage.

17 I look for teaching opportunities with my daughter. She's  
18 very smart and maturing and I'm running out of them, but I saw  
19 a teaching opportunity today.

20 Derrick, can you pull up their opening Slide 64.

21 (Demonstrative published.)

22 **MR. HENDERSHOT:** Thank you, Mr. Lewis.

23 So when I say that they're going to pick a random point  
24 and another point and start drawing boxes around stages that  
25 aren't stages, they're doing it already. This is a slide they



1 presented in their opening. If you look at this top figure --  
2 if you could zoom in on that, Mr. Lewis.

3 (Demonstrative published.)

4 **MR. HENDERSHOT:** You see the boxes here that are the  
5 stages. Those are the stages we just saw in NXP's schematics.  
6 Those have been and always will be the stages in our products.

7 For them to prove infringement, they've got to draw this  
8 yellow box here (indicating). We're going to cut one stage in  
9 half, we're going to grab the next one and cut the next one in  
10 half and call that a stage, and then they're going to pick  
11 points and say, well, that's really infringement.

12 Well, they don't get to do that. The claim requires a  
13 stage. You need to look at a stage, and see what's inside it  
14 and what's required in that claim, and see if it's in the  
15 stages in NXP's products. You won't see it there 'cause I  
16 just showed you the stages. They've got those two paths. To  
17 avoid those two paths, they cherry-pick these endings and they  
18 carve these stages up, and they're just not permitted to do  
19 that with the claim.

20 Now, Mr. Lewis, if you could zoom in on the bottom image.

21 (Demonstrative published.)

22 **MR. HENDERSHOT:** So I said I want you to look at the  
23 evidence. I do. The evidence is what you'll base your  
24 decisions on. Documents are evidence. Schematics are  
25 evidence. This is a schematic that they showed you. Be

1 careful what you're seeing when people annotate things in  
2 that. Look at the evidence, pay close attention to it.

3 This is actually part of the images I was showing you  
4 earlier that had the two paths. They were really clear:  
5 Blue, red, capacitor on the top, capacitor on the bottom.  
6 This is their rendition of it. And they have cropped it a  
7 little bit, and I said they kind of squint and look at parts  
8 of it. Let me show you. (Indicating). You remember that red  
9 path? That red path I showed you (indicating) is actually  
10 right there.

11 So they say this is a single-path rectifier, but they  
12 don't draw the other path. And I know the claim doesn't just  
13 say path, it says "charge-accumulating path."

14 And what did I talk about for charge accumulation? I said  
15 look for the capacitors, right?

16 They happened to have cropped this image to cut off the  
17 bottom. Do you know what's connected to that red path? You  
18 may be able to guess. (Indicating.) Capacitors.

19 That's a charge-accumulating path. It's there. They  
20 can't make that or the capacitors go away by trying to point  
21 at something else in the schematic. So look at the evidence,  
22 look at it carefully.

23 So that's the -- and they've also got a problem because of  
24 this, when they cherrypick the start and endpoint, which  
25 disregards stages altogether, and I don't think you even need

1 to get this point, they do that. They say, well, if you pick  
2 this, you pick this one over here, there's no other paths  
3 between those.

4 Well, they've got a problem there, too, 'cause there  
5 actually is. Their patent is such a bad fit for our design,  
6 they're just so fundamentally different that they've got to  
7 carve out the stages, pick random spots, and they still can't  
8 avoid a second path.

9 Now, they say that path is a leakage path. So -- let me  
10 clear this.

11 Can you go back to our slide presentation, Mr. Lewis?

12 (Demonstrative published.)

13 **MR. HENDERSHOT:** So when they pick their random  
14 starting points, they say that there is no other  
15 charge-accumulating path between this point and this point,  
16 never mind that it's not a stage, it's actually like three  
17 stages. There's still a path where current flows even with  
18 that.

19 So what's their response to that?

20 They start throwing out labels. They say, well, this is a  
21 bias path. This is bias circuitry. Well, this is a leakage  
22 path, and it's much less. Or this is parasitic. And they use  
23 those to say, well, this bottom path is too small, it's too  
24 small to be considered, even though it's a path upon which  
25 charge accumulates, and that's all that's required in the

1 claim to be there to get outside of it, they just say it's too  
2 small.

3 Now you'll learn in this case and hear from people when  
4 they say "parasitic," that means charge is accumulating still.  
5 When they say "bias," you need charge to accumulate to bias  
6 something. And when they say "leakage," that means charge is  
7 leaking and accumulating and flowing. That doesn't get them  
8 out of these claims.

9 The patent doesn't say -- and I encourage you, look at the  
10 evidence, read the claims, and listen to the Court's  
11 instructions and decide based on that. You will not see  
12 anything in the claim that says "no other big paths" or "no  
13 other paths other than a bias path." You won't see that. It  
14 says "no other path." And we clearly have other paths in our  
15 products as they're designed to operate with their stages  
16 here, and even under their cherrypicked beginning and ending.  
17 So importantly, look at the claim language, look at the  
18 evidence, follow what Your Honor tells you.

19 And I think when you get there, you'll find that these  
20 really are just fundamentally different designs. They're  
21 trying to fit a square peg in a round hole here. We have a  
22 two-path designs. Look at the evidence, look for the  
23 capacitors, and I think you'll conclude NXP cannot infringe.

24 So invalidity, it's another issue you will be asked to  
25 deal with. We need to show that by clear and convincing

1 evidence. Counsel made a big deal about that standard, and  
2 you should take the instructions and standards and evidence  
3 very seriously and follow them. But, I'll tell you what, I'm  
4 not afraid of that standard here. I'm not. When you see the  
5 evidence, I don't think it could be more clear. And when you  
6 look at it, I think you're going to find it convincing under  
7 any standard.

8 So why do we look at invalidity?

9 You saw the video that the Court played for you. We need  
10 to assess, your job. We need to present you evidence. You  
11 need to decide whether what's in that patent is new and not  
12 obvious to someone of ordinary skill in the art in this field.

13 That's your obligation. The law recognizes that. The  
14 patent office is a government agency. They have a lot of good  
15 people there. I have some friends that worked at the patent  
16 office. They review a lot of applications. Sometimes they  
17 make mistakes. That's why we need to do this job.

18 You need to assess whether these inventions are new and  
19 whether they are something that are -- is non-obvious to a  
20 person of ordinary skill in the art. The law requires us to  
21 address that here. That's what that video explained.

22 Now, why do we do that? There may be facts or evidence  
23 that the examiner didn't get to appreciate. It what's called  
24 an ex-parte process. If you're trying to get a patent, it's  
25 just you and the patent office, and you're making your case to

1 give you the patent. There's not another check, like another  
2 party saying, hey, but you may want to look at this or this.  
3 That's not the process there. That's the process here.  
4 That's why we need to do it. As the video said, mistakes can  
5 be made. Important information could be overlooked. The  
6 examiners have a lot of work to do. I think the video said  
7 there were 600,000 patent applications in a year that they had  
8 to deal with like the two that led to the patents you're  
9 looking at here. 600,000 in a year. And that number has not  
10 gone down since the 2012 time when I think they're talking  
11 about in that video. No process is perfect. It's our  
12 obligation to take this up and assess it.

13 So, Mandal we talked about. They pointed at a patent that  
14 was considered by the patent office by Mandal. He's a smart  
15 guy, MIT guy. Before their patent, he had two patents on this  
16 and wrote a thesis about it as well. You're going to see that  
17 evidence. Those are Exhibits 46 and 47 here, and you'll see  
18 those exhibits in this case.

19 And again, it's really central here because if you look at  
20 Mandal and its two-path stage there with the capacitors on the  
21 top and the bottom and the blue path and the red path, that is  
22 the design that NXP implements. It is not different.

23 So, they've got a dilemma. They've got two real  
24 challenges and one real problem.

25 The first -- first challenge they've got is their

1 rectifier really may not be that new. You saw the invention  
2 disclosure. They said two-path rectifiers were available.  
3 They blocked out the bottom half and made some other tweaks.  
4 They've got that challenge.

5 And the second challenge is they need their single-path  
6 rectifier invention to cover a two-path rectifier here, so  
7 they've got to strain and stretch and do it, and I don't think  
8 they can have it both ways. And I think you'll conclude that  
9 when you see the evidence.

10 Now, the patent video talked about a patent being like a  
11 deed to a piece of property and setting out fence lines.

12 (Demonstrative published.)

13 **MR. HENDERSHOT:** This sort of the highlights their  
14 dilemma. If their -- if their deed says they get a  
15 single-path rectifier, they do. But they can't get NXP with  
16 that because NXP has two paths. I just showed you the  
17 pictures. Mandal also has two paths, so they can avoid the  
18 disclosure of Mandal. There's another one we'll get to in  
19 this case where even Mandal said, hey, you can actually split  
20 my two-path rectifier into two separate paths, a lot like when  
21 they drew a block over the bottom thing.

22 We'll get to that, but just focusing on the two paths  
23 here, they can keep their deed as a single-path rectifier and  
24 stay away from Mandal. But they can't get NXP.

25 If they want to expand their deed to capture NXP and its

1 two-path rectifier and say we've covered multiple paths, they  
2 get Mandal, and the patent's invalid.

3 You're going to hear evidence about this from people far  
4 smarter than me, from experts that will testify and explain  
5 this to you. But that is the analogy used in the video, and  
6 that is their fundamental dilemma with this '597 patent.

7 And it gets crystallized here, and you'll hear about this.  
8 This is with their cherrypicked start and end points across  
9 multiple stages, you'll see. Their expert Dr. Durgin said  
10 this blue path in Mandal is the charge-accumulating path. But  
11 because Mandal's prior art, they wanted to have a second path  
12 so they could get away from it.

13 So he says, but look at this green path. He talked about  
14 leakage. That's a leakage current. That leakage current is a  
15 second charge-accumulating path. That's how he distinguishes  
16 Mandal to say this -- this invention is patentable over those.

17 When he looks at NXP's product, when he picks again, you  
18 see he's picking across three stages here. I don't think he  
19 should even get to that point. But if you entertained their  
20 choice of these starting and endpoints, he says, look at this  
21 blue path. That's the charge-accumulating path. But because  
22 he wants it to be infringement now, he can't have a second  
23 charge-accumulating path. So what does he say? This green  
24 path is a leakage path, and I would not consider a leakage  
25 path a charge-accumulating path.



1 Now, prior art, leakage current, second  
2 charge-accumulating path. Got to prove infringement. Leakage  
3 paths are not charge-accumulating paths. If that sounds  
4 inconsistent to you, I think the evidence will show you that  
5 it is. It's one or the other.

6 If it's a charge-accumulating path, as he says, on the one  
7 hand, NXP doesn't infringe even under their strained  
8 multistage definition. If it's not a charge-accumulating  
9 path, then it's not a charge-accumulating path in Mandal, and  
10 it's invalid. Again, this -- you'll hear about this in  
11 detail, but this crystallize it is limit that they've got.  
12 And I don't think they can have it both ways.

13 So let's get to the '302 patent. I agree with counsel  
14 this one's about shapes.

15 (Demonstrative published.)

16 **MR. HENDERSHOT:** This is the first claim of the '302  
17 patent. There are a lot of words there, but it really is  
18 about shapes. And because it's about shapes, pictures are  
19 pretty useful. These circuits are small, and you need to  
20 attach an antenna to them -- antennas or antennae.

21 So you can do that a bunch of different ways. You can use  
22 bumps. You can use pads. Those would then know. The  
23 evidence is going to show you they didn't invent the idea of  
24 gluing antennas to these. They didn't invent the idea of  
25 using pads. They didn't invent the idea of using large pads.

1 They are down to the shapes, these shapes here.

2 You have basically two pads with a space or a channel  
3 between them that's wider at the ends than it is in the  
4 middle, kind of like a hour glass, roughly. And they said,  
5 that channel is going to help fluid flow.

6 And we'll get to the prior art on that. But, yeah, the  
7 court did conclude that NXP infringes this patent. It did.  
8 It said our shapes are within those shapes. But that does not  
9 impact the separate questions you are required to address and  
10 it's your job to address here. Are these shapes worthy of a  
11 patent? The patent video told us we need to look at that and  
12 check.

13 If these shapes are worthy of a patent, did NXP really  
14 intentionally copy these shapes or maybe use a design it  
15 already had. And if it copied these shapes, did it think, you  
16 know what, maybe these shapes are -- aren't valid. Or did  
17 they deliberately, as an innovative company, make a decision  
18 to say that is a valid patent? We infringe it. Let's go do  
19 it anyway. Or did they have reason to believe maybe they had  
20 a defense? That's what you're going to be asked to resolve.

21 And lastly, you'll be asked to determine the amount of  
22 damages if you find the patent valid. And we'll get to that  
23 in a moment.

24 So they talked about this Eberhardt patent. This  
25 Eberhardt patent, they will tell you when they put up their

1 charts and start checking boxes, has everything in their  
2 claims except the shape. They don't dispute it. It's nearly  
3 20 years before their patent. It had the large pads for an  
4 RFID tag to which you're attaching antenna.

5 Now, they -- you'll hear from people that it is ^ a  
6 dressed flip chip. Absolutely is. You'll get that explained  
7 to you. But the big takeaway here is Eberhardt has big pads.  
8 Their patent had big rectangular pads, and they said  
9 rectangular pads are bad for fluid flow. They're bad. So you  
10 want to cut off the corners, like making shapes, and that will  
11 improve fluid flow. So rectangle's bad. Cut off the corners.  
12 Make it like an hour glass. The flow will improve.

13 The problem with that is Ching-San, a patent you'll see  
14 from five years earlier, recognized that very problem and  
15 solved it the exact same way. Ching-San's directed to  
16 attaching things with adhesives to a circuit. It has these  
17 little pins or pads that you see there. And Ching-San said,  
18 you know, when you're using adhesives, rectangular shapes are  
19 bad. Right angles are bad. You should use a different shape  
20 like these diamonds here.

21 So they said start with rectangles. Those are bad. Use a  
22 different shape that has kind of an hourglass shape in  
23 between. You see that shape there. This Ching-San patent is  
24 '521. Go read it. You'll get a chance to look at it. Check  
25 my work. It's got this in there.

(Demonstrative published.)

**MR. HENDERSHOT:** On the right is a shape from the patent that embodies their invention. Go from rectangles to another shape, same thing as Ching-San, just five years later.

So that's one diagram from their patent. What about the one with the octagons or the tampered edges where you cut off the corners of the rectangle? Well, Ching-San's got that too. Start with rectangles, bad flow. Let's improve it by adopting another shape, same shape in Ching-San as in the '302 patent.

And they put up a picture of the rounded one. They have a rounded one in their patent. What about that? Yeah, that's got that too.

(Demonstrative published.)

**MR. HENDERSHOT:** What about the rounded corners? It's got that too. They say their patent is about shapes, and they use these shapes where you cut off the corners and have the shape channel to improve fluid flow, and that's their invention. That's fine, but they didn't do it first. Ching-San did it five years earlier. And you're going to hear that explained by Dr. Subramanian, who is an expert, I think you'll find, in fluid dynamics with these kind of chips.

So we think when you review the evidence, you're going to find this patent invalid as obvious. Yeah, I'm not going to shy away. We have a clear and convincing burden we need to satisfy. I think that you'll see that those pictures are

1 clear. I think when you hear them explained by -- by the  
2 experts and you view the evidence in this case, you will be  
3 utterly convinced that the stuff was in the prior art at least  
4 five years before these guys.

5 So let's talk about the UCODE 8 and the shape here.

6 (Demonstrative published.)

7 **MR. HENDERSHOT:** They say, look how similar these  
8 shapes are, had to have copied it, had to have copied it from  
9 us. The beauty of our system is, again, an accusation isn't  
10 proof. An accusation isn't evidence, and you will render your  
11 decision on the facts as instructed on the law once you see  
12 all the evidence. And remember those three questions I wanted  
13 to you think about earlier when they say we copied? Do we  
14 lack the expertise? Do we have our own design before? And do  
15 we have products that perform better?

16 Well, we've seen how our products perform, so let's take  
17 the first two questions. They perform better than their  
18 chips.

19 Look at the evidence here, and look carefully at it. Some  
20 of the evidence you'll see are a few of the documents they put  
21 in their slides, these announcements and awards and press  
22 releases they had, and press releases from NXP. They  
23 highlighted some words. I actually caught some words they  
24 didn't highlight in those when I was reading through it.

25 They said, we have a great two-pad design, two large pads

1 better than the four-pad stuff in the prior art,  
2 distinguishing the classic four-pad design. And when NXP  
3 announced its UCODE 8 shape that they emphasized -- they said  
4 we touted the shape -- he didn't highlight that it said, we  
5 have a great four-pad design.

6 NXP had a four-pad design. They have it for a reason.  
7 Those small pads are called test pads. They're used in the  
8 manufacturing process, and they have to be separate from the  
9 big ones for that to work. Once this is in a tag, they're  
10 dead. They're not connected to the circuitry underneath.  
11 Only those two big pads connect the antenna to the circuitry.

12 NXP thought, we have a four-pad design versus this two-pad  
13 design, and if you look at -- there are things that actually  
14 do something interactive. They've got a different shape. Did  
15 the court conclude that they infringe? Yes. Does that mean  
16 they didn't believe that? No. And you need to determine, if  
17 you're assessing willful infringement, whether they believe  
18 that.

19 And they talked about correspondence between the parties.  
20 You're going to see evidence of a response from NXP to Impinj  
21 to this letter saying, you infringed. Please stop. We  
22 explained that to them exactly in that letter years before  
23 this lawsuit.

24 We said, look, we see your design. We have a four-pad  
25 design, and these are actually test pads. We don't think we

1 infringe. We thought it then. We think it now. The courts  
2 disagreed -- the court disagreed. That they happened to be  
3 wrong ultimately at this point doesn't mean they didn't  
4 believe it. It doesn't mean that they willfully infringed.

5 So let's talk about copying. They've got a big problem  
6 with their copying case, and he didn't show you this. And  
7 he -- honestly, he didn't show you these Ching-San shapes,  
8 which he said the '302 patent was valid in his presentation.

9 Look at all the evidence. This is a high-tech product.  
10 It's a passive RFID tag sold by NXP, sold today with these  
11 pads in these shapes. See those pads at the top? They look  
12 familiar. NXP's been selling that for years. It's never been  
13 accused of infringement. NXP sold this product with these  
14 pads in 2010. Never been accused of infringement.

15 So let's look at the progress here. What's more likely  
16 than not? That NXP copied a patent and that figure there that  
17 they didn't know about until after their product was designed  
18 and released. And it takes a long time to design these  
19 products, a fair amount of time. That was designed before  
20 May 2017.

21 If you look -- if it's the space between the pads we're  
22 talking about, look at HITAG, look at UCODE 8. It's a lot  
23 closer than what's in their '302 patent. That's not an  
24 accident. The same people that worked on HITAG are in the  
25 same building that worked on UCODE 8. And those -- those pads

1 and HITAG -- I love this name -- Mega Bumps. They call them  
2 Mega Bumps.

3 It's an interesting name. It always stuck out to me in  
4 this case. And hopefully it sticks out to you because you  
5 will see evidence in NXP design documents for the UCODE 8 when  
6 they were coming up with that pad design they say infringed  
7 and was copied where they called Mega Bumps. They were  
8 continuing that design that they had before, and that HITAG  
9 product was sold before their patent even existed and sold  
10 today with that pad shape, which is exactly what they're  
11 saying in their claims cover.

12 So I'm going to talk briefly about damages. I don't think  
13 you're going to need to get to it in this case. If you find  
14 that the -- if you find invalidity or non-infringement, you  
15 don't need to get to the question of damages.

16 But you saw the slide, and I'll have a couple to respond  
17 to it. But think about it. Look at the evidence in this  
18 case. You have shapes and a patent where another patent had  
19 those shapes for the very same reason five years earlier, and  
20 they're saying that's worth \$18 million. You should give them  
21 \$18 million because of those shapes.

22 Or you should give them \$18 million for half a rectifier  
23 that we don't use when you look at our product and it stages  
24 properly. We'll put on evidence for Mr. Haas and others,  
25 explaining to you why we think that number is inflated and



1 inflated significantly. And part of that is they're saying we  
2 lost sales because of infringement. I think he actually said  
3 that in his opening. Look at their documents that they  
4 prepare internally. They're not in court doing that. That's  
5 when they're talking amongst themselves with nobody around.

6 We talked about their performance here. This tells the  
7 story, and this is -- this is a strategy document from them  
8 after they filed this lawsuit. They said performance sells  
9 ICs, and NXP's chips outperform them every step of way.

10 They say we copy them. We beat them. We design better  
11 chips because we have different ideas. And the one thing this  
12 shows is you is if the Monza 5, the Monza 6, and UCODE 8 all  
13 use the same rectifier invention, the performance of those  
14 chips that they say sells them is not tied to that rectifier.

15 So why did they lose sales? This is another internal  
16 strategy document they have.

17 (Demonstrative published.)

18 **MR. HENDERSHOT:** This is 2021 after they filed this  
19 litigation. Internally, when they're looking themselves in  
20 the mirror and saying, why did we lose sales, they came up  
21 with this timeline. They don't say, NXP copied us. They  
22 don't say, they infringed our paths, or they're using one path  
23 with a two-path rectifier. No. Go -- just read through this.  
24 There are a series of bad business decisions along the way,  
25 failed product features, mismanaged efforts.

1 And in 2018, the UCODE 8 beats the MR6 at ARC. It beats  
2 it. ARC is the Auburn Research Center. They qualify some of  
3 these tags, and they test them. The UCODE 8 beat them, and  
4 that's 2018. And that's going to be a relevant date when  
5 you're trying to calculate damages. So when they say they  
6 lost all of these sales because of NXP's infringement to you,  
7 I want you to think about what they said to themselves when  
8 they're trying to determine why they lost share.

9 They don't mention copying. They don't mention their  
10 patent once. The one time they mentioned NXP that I see, it  
11 says they had a better product. They did. You don't build a  
12 better product by copying someone else's answers.

13 So he'd asked the question, why are we here -- and I'm  
14 going to wrap up shortly, and I appreciate your patience -- we  
15 talked earlier about NXP and the windmills the tulips. They  
16 have something called Project Windmill that they did for quite  
17 a long time at their company. This document is from 2018, and  
18 this is their senior executive leadership staff meeting and  
19 discussing this. The first one, Chris, there, is Mr. Diorio.  
20 You're going to hear him testify tomorrow. He's going to say  
21 a lot of things about why we're here and all that.

22 But Project Windmill sounds clandestine, sounds  
23 mysterious. You've probably guessed what the windmill is.  
24 It's NXP. This was a campaign where their senior executives  
25 were trying to slow the adoption of NXP's products that

1 performed better any way they could. They are proposing  
2 initiatives. They are tracking progress. They're identifying  
3 future actions like it's a project management among their  
4 senior leadership. And one of those options they were  
5 considering to attack NXP was litigation, litigation like the  
6 one that's got us all here.

7 So when they talk about why they're here, why we're all  
8 here for this litigation, think about this. Think about what  
9 they say internally, and they've got another internal document  
10 that sets out what their goal was. It's not subtle. It's not  
11 surprising. They want to burn the windmill down. That's  
12 their goal.

13 Again, this is their senior leadership, including  
14 Mr. Diorio. This is a slide that they put into a presentation  
15 amongst their senior executives. They talk about targeting a  
16 product and trying to compete with a product. They want to  
17 burn the windmill down. That's the goal they set out with.  
18 That's what they're trying to do. But there are protections  
19 against that. There are protections against that in this.

20 And you know what the main protection is? You. You have  
21 to hear the evidence. They can't just make claims or try to  
22 achieve a goal. You need to hear the evidence, listen to the  
23 instructions from the Court on the law, and render your  
24 decisions as to the facts. That evidence will be testimony  
25 from witnesses. That evidence will include documents that are

1 design sheets that have these shapes. You can look at these  
2 shapes and compare them. There'll be circuit schematics.  
3 Make sure you're looking at a whole circuit schematic, not one  
4 that's cropped or kind squinted at where the capacitors aren't  
5 there. Look at what they said internally. That's the  
6 evidence you should consider when weighing your decisions and  
7 rendering your decisions in this case.

8 So with that, I, again, thank you for your patience. Next  
9 thing we're going to do is get to evidence. That's going to  
10 start tomorrow. But on behalf of NXP and my team that's proud  
11 to be here and represent them, I want to thank you, again, for  
12 your time, your attention, and your service.

13 At the end, you're going to be the ones deciding the facts  
14 based on guidance on the law from the court. Listen to these  
15 witnesses, look at these documents, consider all the evidence,  
16 all of it, not just part of a circuit diagram or a one-side  
17 story. We're confident if you do that, you're going to reach  
18 the right result here.

19 So again, on behalf of NXP and those of us privileged  
20 enough to stand up before you and defend them against these  
21 accusations, I thank you, and I look forward to the rest of  
22 trial.

23 **THE COURT:** All right. Thank you.

24 All right. Members of the jury, before I release you,  
25 just a few more words about your conduct as jurors. First,

1 keep an open mind throughout the trial, and do not decide what  
2 the verdict should be until you and your fellow jurors have  
3 completed your deliberations at the end of the case.

4 Second, because you must decide this case based solely on  
5 the evidence received in this case and on the instructions as  
6 to the law that applies, you must not be exposed to any other  
7 information about the case or to the issues it involves during  
8 the course of your jury duty.

9 Thus, until the end of the case or unless I instruct you  
10 otherwise, do not communicate with anyone in any way. And do  
11 not let anyone else communicate with you about the merits of  
12 the case or anything to do with it. This includes discussing  
13 the case in person, in writing, by phone, tablet, or computer,  
14 or any other electronic means, via email, text messaging, or  
15 any Internet chat room, blog, website, or application,  
16 including but not limited to Facebook, YouTube, Twitter,  
17 Instagram, LinkedIn, Snapchat, Tiktok, or any other form of  
18 social media.

19 This applies to communicating with your fellow jurors  
20 until I give you the case for deliberation. It applies to  
21 communicating with everyone else, including your family  
22 members, your employers, the media or the press, and the  
23 people involved in the trial, although you may notify your  
24 family and employer that you've been seated as a juror in the  
25 case and how long you expect the case to last.

1 But if you are asked and approached in any way about your  
2 jury service of anything about this case, you must respond  
3 that you have been ordered not to discuss the matter and  
4 report any contact to the court.

5 Because you will not -- excuse me. Because you will  
6 receive all the evidence and legal instruction you may  
7 properly consider to reach a verdict, do not read, watch, or  
8 listen to any news or media accounts or commentary about the  
9 case or anything to do it. Do not do any research such as  
10 consulting dictionaries, searching the Internet, or using any  
11 reference materials. And do not make any investigation or in  
12 any way try to learn about the case on your own.

13 Do not visit or view any case -- excuse me -- do not visit  
14 or view any place discussed in this case. Do not use the  
15 Internet or any resource to search for or view any place  
16 discussed during the trial. Do not research about the case,  
17 the law, or the people involved, including the parties, the  
18 witnesses, or the lawyers until you have been excused as  
19 jurors. If you happen to read or hear anything touching on  
20 the case in the media, turn away, and report it to me as soon  
21 as possible.

22 These rules protect each party's right to have this case  
23 decided solely on the evidence that has been presented here in  
24 Court. Witnesses here in Court take an oath to tell the  
25 truth, and the accuracy of their testimony is tested through

1 the trial process.

2 If you do any research or investigation outside of the  
3 courtroom or gain any information through improper means, then  
4 your verdict may be influenced by inaccurate, incomplete, or  
5 misleading information that has not been tested through the  
6 trial process.

7 Each of parties is entitled to a fair trial by an  
8 impartial jury. And if you decide the case based on  
9 information not presented in Court, you will have denied the  
10 parties a fair trial.

11 Remember, you've taken an oath to follow these rules, and  
12 it's very important that you do so. Any juror who violates  
13 these restrictions jeopardizes the fairness of the  
14 proceedings. Again, if you're exposed to any information,  
15 please contact me.

16 A couple of other small points.

17 One, you've been given a phone number to contact if anyone  
18 needs to contact the Court. While you're here in the trial, I  
19 don't want you to worry that something has happened to any of  
20 your loved ones or that something's going on and someone can't  
21 find you. You're going to have to have your phones off. If  
22 you give that number to whoever you need, they can -- they can  
23 call that number. The person who answers the phone will  
24 communicate with my courtroom deputy electronically, and he  
25 will communicate with me electronically. I promise you I will

1 stop this trial, and I will get you that message so that you  
2 don't have to worry. Okay?

3 Next, as you think about -- and we'll start tomorrow --  
4 oh, the second thing is we will have some -- some snacks for  
5 you tomorrow. Didn't happen today. But we will have  
6 tomorrow. And as you saw, there's a microwave. There's a  
7 refrigerator if you want to bring anything for yourself.

8 What the -- what the lawyers did today is -- the way I  
9 like to describe it is -- I do puzzles. And all they really  
10 did was give you what the cover of a puzzle box is, right?  
11 Inside a puzzle box is -- think about it as the evidence. We  
12 have nothing in our puzzle box. You have no evidence. By the  
13 end of trial, you will have all of pieces of evidence that you  
14 can properly consider.

15 And then you'll put the puzzle together the way you think  
16 it should fit, and that's going to be your verdict. All  
17 the -- all the attorneys did was tell you what they think that  
18 cover looks like, nothing more. It not evidence. Okay?

19 Does anybody have any questions before I release you for  
20 the day?

21 No? All right. I know it's been a long day. Tomorrow  
22 we'll finish up at 1:40. Have a good night, and we'll see you  
23 tomorrow. We'll start promptly with you at 8:30 in the  
24 morning. Thank you.

25 **THE CLERK:** Please rise for the jury.



1 (The following proceedings were heard out of the presence  
2 of the jury:)

3 **THE COURT:** Okay. The record will reflect the jury  
4 is gone.

5 So I need those deposition transcript cites sent to me and  
6 then we can meet back here at 4:00, and we can go through them  
7 and I can figure out what we're going to do about that witness  
8 tomorrow.

9 All right. We'll stand in recess until 4:00 o'clock.

10 (Recess taken at 3:09 P.M.; proceedings resumed at 4:01  
11 P.M.)

12 (The following proceedings were heard out of the presence  
13 of the jury:)

14 **THE COURT:** Back on the record.

15 The record will reflect that I have the lawyers present,  
16 the jury is obviously not here.

17 All right. Counsel, come to the mics.

18 **MR. AL-SALAM:** Excuse me?

19 **THE COURT:** Come to the microphones.

20 Okay. So back to where we were at the beginning of the  
21 day. I see that there are -- well, I see a couple -- I see a  
22 number of things in the -- in what's been provided to me by  
23 Ms. McCullough. I'm assuming that -- yes, it looks like Jones  
24 Day was copied. So I don't exactly know what Oliver wants to  
25 say.

1 Let's go back to this -- these slides. And you told me  
2 that 18, 20, and 22, right?

3 So on page 18, the title of the slide is "Impinj Monza R6  
4 charge-accumulating path." So there is some deposition  
5 testimony with respect to this issue.

6 **MR. RITCHIE:** The deposition testimony, Your Honor,  
7 as I saw it, concerns how that path is described in the patent  
8 with reference to Figure 8B.

9 **THE COURT:** Right.

10 But that's what this slide refers to, isn't it?

11 **MR. RITCHIE:** This is -- this is -- Slide 18 is  
12 referring to the product, not -- not the -- not the figure  
13 that's in the specification.

14 **THE COURT:** In the deposition, he was asked about the  
15 charge-accumulating path?

16 **MR. RITCHIE:** That's correct.

17 **THE COURT:** And he was designated on that topic?

18 **MR. RITCHIE:** Yes.

19 **THE COURT:** Okay. So he testified about the issue.  
20 And if you chose not to follow-up, that's on you. That's not  
21 on him.

22 **MR. RITCHIE:** I understand.

23 In one of the other excerpts -- and I can point you to  
24 page 180 at -- at row five to six, Mr. Oliver said --

25 **THE COURT:** Hold on.

1           **MR. RITCHIE:** I'll wait till you get there.

2           **THE COURT:** So on the issue of biasing, that's what I  
3 have from Page 180.

4           **MR. RITCHIE:** That's correct. And in row -- I just  
5 want to point out, with respect to Slide 18, in his deposition  
6 at 180, row five, he said "I don't see anything in claim one.

7           **THE COURT:** Hold on. Oh, I was on the wrong page.  
8 180, line 5.

9           **MR. RITCHIE:** He said, "So I don't see anything in  
10 claim one that's addressing the bias on these transistors."

11           Now, in these slides, it --

12           **THE COURT:** Where does the slide say that it  
13 addresses something in claim one?

14           **MR. AL-SALAM:** Exactly. Thank you.

15           **MR. RITCHIE:** The slides --

16           **THE COURT:** Hold on. I mean, it's a rhetorical  
17 question. There's nothing on this slide that says anything  
18 about claim one, right?

19           **MR. RITCHIE:** That's correct.

20           **THE COURT:** So what does this relate to then,  
21 Mr. Al-Salam?

22           **MR. AL-SALAM:** This relates to him describing how the  
23 Impinj circuit works, which he testified about. He was  
24 designated to testify about both the '597 patent and how the  
25 Impinj products practiced the patent.

1           **THE COURT:** Yeah, I agree. I saw that -- I saw that  
2           in the 30(b)(6) notice.

3           **MR. RITCHIE:** Agreed, Your Honor.

4           And, again, I would -- just to expand on my point before,  
5           he said that a bias circuit was not part of claim one, but  
6           yet, the slides, 18 through 22, now, all talk about bias  
7           circuits.

8           **THE COURT:** Do they relate to claim one; yes or no?

9           **MR. RITCHIE:** I understand that Mr. Oliver is going  
10          to argue that in these slides, Your Honor.

11          **THE COURT:** Hold on.

12          **MR. RITCHIE:** Claim one does not --

13          **THE COURT:** Stop.

14          **MR. RITCHIE:** Claim one does not have bias circuit.

15          **THE COURT:** When I say "stop," you need to stop,  
16          right? It's the end of the day. We've been going a long  
17          time.

18          Mr. Al-Salam, does this relate to claim one or not?

19          **MR. AL-SALAM:** No, Your Honor.

20          **THE COURT:** Okay. If it doesn't relate to claim one,  
21          then what does it relate to?

22          **MR. AL-SALAM:** That he's describing how the Impinj  
23          circuit works.

24          **THE COURT:** He can testify as to that as long --  
25          and -- and the other thing is if -- if he somehow says that

1 this applies to claim one, then you've got deposition  
2 testimony on which you can cross-examine him on that. And, in  
3 fact, impeach him on it, right?

4 **MR. RITCHIE:** (Nods head.)

5 **THE COURT:** So he testified as to it. He was  
6 designated to testify as to it. I don't know how I can  
7 exclude it.

8 How can I exclude it when he was designated to talk about  
9 it?

10 **MR. RITCHIE:** Your -- Your Honor, just stepping back.

11 **THE COURT:** All right.

12 **MR. RITCHIE:** It's a negative limitation. There is  
13 no other path. Impinj is attempting to introduce testimony  
14 through Mr. Oliver that this term has a specific meaning and  
15 is limited to paths that are dominant, not tiny. And you can  
16 see the words "dominant, not tiny" in 20 and 22. And you  
17 heard --

18 **THE COURT:** Hold on. I was on 18. So now you want  
19 me to move to 20?

20 **MR. RITCHIE:** Twenty. You can look at 20.

21 **THE COURT:** Where is it on 20?

22 **MR. RITCHIE:** The bubble at the left says the  
23 charge-accumulating path, the charge fluid is dominant. In  
24 the bubble on the right, the bias circuit, the charge flow is  
25 tiny. So he's, through this, going to be arguing that there's

1 a specific meaning to this term "charge-accumulating path" as  
2 opposed to describing its plain and ordinary meaning.

3 **THE COURT:** Delete dominant. Delete tiny.

4 What else?

5 **MR. RITCHIE:** On Slide 21, he's comparing the  
6 Monza --

7 **THE COURT:** Okay. Now this --

8 **MR. RITCHIE:** -- product to the accused product.

9 **THE COURT:** -- looks like a potential problem.

10 **MR. AL-SALAM:** I'll say two things: One is they  
11 asked him at length about what the claims --

12 **THE COURT:** Where -- you've given me deposition  
13 testimony. Where is that?

14 Because I've read -- during the break, I have read what  
15 you gave me, and I didn't see any statements or testimony with  
16 respect to a comparison to the UCODE 8.

17 **MR. AL-SALAM:** He was designated as to provide  
18 testimony as to the comparison of the Impinj products with  
19 accused products. Also, he was designated to provide  
20 testimony on the teardown. He was asked in the testimony we  
21 identified whether he was familiar with the rectifier circuit  
22 in the teardown. He said "yes," and they didn't ask him  
23 further questions about it.

24 **THE COURT:** All right. Hold on a second. Let me  
25 look at that one 'cause I was focused on the other.

1           **MR. AL-SALAM:** This is the teardown.

2           **THE COURT:** Oh, I see. I'm looking at 48-20. Hold  
3 on.

4                               (Pause in the proceedings.)

5           **THE COURT:** Okay. So here, Mr. Hendershot  
6 specifically asked him about topic number 28, which relates to  
7 his designation to provide testimony on, quote, All efforts to  
8 use, test, modify, reverse engineer, teardown or otherwise  
9 determine any functionality of the accused products, including  
10 but not limited to technical performance comparisons.

11           So Mr. Hendershot starts the deposition with respect to  
12 that topic and at a certain point moves to the teardown report  
13 for the UCODE 8 product.

14           So why shouldn't I allow the testimony on Page 21, which  
15 seems to be the same?

16           **MR. RITCHIE:** It's -- it's more than about the  
17 teardown, Your Honor. As you can see in the upper right  
18 corner, there's the claim language. And so this is purporting  
19 to analyze the products.

20           **THE COURT:** Right. But that is covered in topic 28.  
21 It's within the scope of 28, and he was designated, and the  
22 fact that you choose not to depose on that topic is on you,  
23 not on plaintiff.

24           **MR. RITCHIE:** I would agree with that, Your Honor,  
25 but I will also say the standard for an expert is they produce

1 a report and it -- and this analysis was not disclosed in a  
2 report form. This was --

3 **THE COURT:** He could have asked, and he didn't,  
4 right?

5 Why didn't he ask?

6 **MR. RITCHIE:** I guess I'd go back to what's the  
7 distinction here between Mr. Oliver being an expert and  
8 Mr. Oliver being a fact witness for Impinj.

9 **THE COURT:** I agree. My problem is, is that I looked  
10 at this -- the standing order. And while, in general, I issue  
11 an order that has language that addresses this topic. In your  
12 particular case, I didn't because I used your proposed form of  
13 order, and your collective proposed form of order did not  
14 include that language, and I adopted your proposed form of  
15 order.

16 And my standing order, which I also looked at, just says  
17 they have to be designated so that you can depose, which you  
18 did. And you identified a topic, and he was designated. And  
19 you chose not to depose on that topic. So, unfortunately, I  
20 think I have to let it in.

21 And if I had it to do all over again, I wouldn't -- I  
22 wouldn't take your proposed form of order, I'd use my own,  
23 which actually addresses this issue, but I didn't.

24 So that's kind of the state of play.

25 Other than those two words, strike that from those slides,



1 and he can testify as to Slide 21.

2 **MR. AL-SALAM:** Thank you, Your Honor.

3 **THE COURT:** All right. We're adjourned. We'll see  
4 you tomorrow at 8:00 a.m.

5 **MR. AL-SALAM:** Thank you.

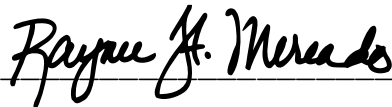
6 **THE CLERK:** Court is adjourned.

7 (Proceedings were concluded at 4:15 P.M.)

8 --o0o--

9  
10  
11 **CERTIFICATE OF REPORTER**

12  
13 I certify that the foregoing is a correct transcript  
14 from the record of proceedings in the above-entitled matter.  
15 I further certify that I am neither counsel for, related to,  
16 nor employed by any of the parties to the action in which this  
17 hearing was taken, and further that I am not financially nor  
18 otherwise interested in the outcome of the action.

19  
20 

21 Raynee H. Mercado, CSR, RMR, CRR, FCRR, CCRR

22 Wednesday, July 5, 2023  
23  
24  
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